OMB No. 1124-0001; Expires May 31, 2020

U.S. Department of Justice

Washington, DC 20530

Registration Statement
Pursuant to the Foreign Agents Registration Act of 1938, as amended

I--REGISTRANT

1. Name of Registrant

   Skadden, Arps, Slate, Meagher & Flom LLP (the "Firm")

2. Registration No. (To Be Assigned By the FARA Registration Unit)

3. Principal Business Address
   4 Times Square
   New York, New York 10036

4. If the registrant is an individual, furnish the following information:
   (a) Residence address(es)
   Not applicable.

   (b) Other business address(es), if any
   Not applicable.

   (c) Nationality Not applicable.

   (d) Year of birth Not applicable.

   (e) Present citizenship Not applicable.

   (f) If present citizenship not acquired by birth, state when, where and how acquired Not applicable.

   (g) Occupation Not applicable.

5. If the registrant is not an individual, furnish the following information:
   (a) Type of organization: Committee ☐ Association ☐ Partnership ☒ Voluntary group ☐ Corporation ☐ Other *(specify)* ______________________

   (b) Date and place of organization April 1, 1948; New York, New York

   (c) Address of principal office 4 Times Square
   New York, New York 10036

   (d) Name of person in charge Eric J. Friedman

   (e) Locations of branch or local offices See Attachment A.

   (f) If a membership organization, give number of members Not applicable.

(g) List all partners, officers, directors or persons performing the functions of an officer or director of the registrant.

Name	Residence Address(es)	Position	Nationality
See Attachment B.	Residence addresses provided to the FARA Registration Unit under separate cover.		

(h) Which of the above named persons renders services directly in furtherance of the interests of any of the foreign principals?

None.

(i) Describe the nature of the registrant's regular business or activity.

Law firm providing legal services.

(j) Give a complete statement of the ownership and control of the registrant.

The registrant is owned and controlled by the partners of the Firm.

---

6. List all employees who render services to the registrant directly in furtherance of the interests of any of the foreign principals in other than a clerical, secretarial, or in a related or similar capacity.

Name	Residence Address(es)	Nature of Services
Greg Craig (Former Partner)*	Residence addresses provided to the FARA Registration Unit under separate cover.	Legal services
Clifford Sloan (Partner)		Legal services
Margaret Krawiec (Partner)		Legal services
Michael Loucks (Partner)		Legal services
Matthew Cowie*		Legal services
Alex Haskell*		Legal services
Allon Kedem*		Legal services
Paul Kerlin		Legal services
Lauren Malet		Communications
Melissa Porter		Communications
Kara Roseen		Legal services
Alex van der Zwaan*		Legal services

*Reflects former partner or personnel

II--FOREIGN PRINCIPAL

7. List every foreign principal[1] for whom the registrant is acting or has agreed to act.

Foreign Principal	Principal Address(es)
The Ministry of Justice of Ukraine ("MOJ")	13 Horodetskogo Str., Kyiv, Ukraine 01001

III--ACTIVITIES

8. In addition to the activities described in any Exhibit B to this statement, will you engage or are you engaging now in activity on your own behalf which benefits any or all of your foreign principals? Yes ☐ No ☒

If yes, describe fully.

IV--FINANCIAL INFORMATION

9. (a) **RECEIPTS-MONIES**

During the period beginning 60 days prior to the date of your obligation to register[2] to the time of filing this statement, did you receive from any foreign principal named in Item 7 any contribution, income, or money either as compensation or for disbursement or otherwise? Yes ☒ No ☐

If yes, set forth below in the required detail and separately for each such foreign principal an account of such monies.[3]

Foreign Principal	Date Received	Purpose	Amount
Payor: Douglas Schoen NYC LLC	On/around 3/30/12	Initial retainer to assess whether to undertake the matter (on behalf of MOJ)	$150,000*
Payor: Black Sea View Limited	On/around 4/19/12	Legal services (on behalf of MOJ)	$2,000,000*
	On/around 6/7/12	Legal services (on behalf of MOJ)	$1,000,000*
	On/around 7/16/12	Legal services (on behalf of MOJ)	$1,000,000*
MOJ	On/around 6/6/13	Legal services	$1,075,381.41**
MOJ	On/around 6/14/17	Return of funds to MOJ that had been maintained in Firm's client escrow acct.	($567,812.50)***
			$4,657,568.91 Total

The Firm understood that its work was to be largely funded by Victor Pinchuk.
*Advances against which the Firm charged its customary hourly rates and actual expenses incurred.
**Amount paid to the Firm's client escrow account; approximately $450,000 was applied to satisfy amounts owed to the Firm per invoices outstanding.
***Return of funds in excess of fees and actual expenses incurred.

1 The term "foreign principal," as defined in Section 1(b) of the Act, includes a foreign government, foreign political party, foreign organization, foreign individual and, for the purpose of registration, an organization or an individual any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign government, foreign political party, foreign organization or foreign individual.

2 An agent must register within ten days of becoming an agent, and before acting as such.

3 A registrant is required to file an Exhibit D if he collects or receives contributions, loans, moneys, or other things of value for a foreign principal, as part of a fundraising campaign. There is no printed form for this exhibit. (See Rule 201(e), 28 C.F.R. § 5.201(e)).

(b) **RECEIPTS-THINGS OF VALUE**
During the period beginning 60 days prior to the date of your obligation to register[4] to the time of filing this statement, did you receive from any foreign principal named in Item 7 anything of value[5] other than money, either as compensation, or for disbursement, or otherwise? Yes ☐ No ☒

If yes, furnish the following information:

Foreign Principal	Date Received	Thing of Value	Purpose

10. (a) **DISBURSEMENT-MONIES**
During the period beginning 60 days prior to the date of your obligation to register[6] to the time of filing this statement, did you spend or disburse any money in furtherance of or in connection with your activities on behalf of any foreign principal named in Item 7? Yes ☒ No ☐

If yes, set forth below in the required detail and separately for each such foreign principal named including monies transmitted, if any, to each foreign principal.

Date	To Whom	Purpose	Amount
See Attachment C. As noted in 9(a), escrow funds were returned on/around 6/14/17.			

(b) **DISBURSEMENTS-THINGS OF VALUE**
During the period beginning 60 days prior to the date of your obligation to register[7] to the time of filing this statement, did you dispose of any thing of value[8] other than money in furtherance of or in connection with your activities on behalf of any foreign principal named in Item 7? Yes ☐ No ☒

If yes, furnish the following information:

Date	Recipient	Foreign Principal	Thing of Value	Purpose

(c) **DISBURSEMENTS-POLITICAL CONTRIBUTIONS**
During the period beginning 60 days prior to the date of your obligation to register[9] to the time of filing this statement, did you, the registrant, or any short form registrant, make any contribution of money or other thing of value from your own funds and on your own behalf in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office? Yes ☒ No ☐

If yes, furnish the following information:

Date	Amount or Thing of Value	Political Organization or Candidate	Location of Event
See Attachment D.			

4, 6, 7 and 9 See Footnote 2, on page 3.
5 and 8 Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks", and the like.

V--INFORMATIONAL MATERIALS[10]

11. Will the activities of the registrant on behalf of any foreign principal include the preparation or dissemination of informational materials? Yes ☒ No ☐

IF YES, RESPOND TO THE REMAINING ITEMS IN THIS SECTION V.

12. Identify each such foreign principal.

MOJ

*A copy of the informational materials is attached as Attachment A to the Supplemental Statement.

13. Has a budget been established or specified sum of money allocated to finance your activities in preparing or disseminating informational materials? Yes ☐ No ☒

If yes, identify each such foreign principal, specify amount and for what period of time.

No formal budget was established. See response to Question 9(a).

14. Will any public relations firms or publicity agents participate in the preparation or dissemination of such informational materials? Yes ☒ No ☐

If yes, furnish the names and addresses of such persons or firms.

FTI Consulting (Executive Headquarters: 555 12th Street NW, Suite 700, Washington D.C. 20004)
Mercury Public Affairs (DC Office: 300 Tingey Street SE, Suite 202, Washington D.C. 20003)

See Exhibit B.

15. Activities in preparing or disseminating informational materials will include the use of the following:

☐ Radio or TV broadcasts ☒ Magazine or newspaper ☐ Motion picture films ☐ Letters or telegrams
☐ Advertising campaigns ☒ Press releases ☐ Pamphlets or other publications ☐ Lectures or speeches
☒ Other *(specify)* See Exhibit B.

Electronic Communications

☒ Email
☐ Website URL(s):
☐ Social media website URL(s):
☒ Other *(specify)* See Exhibit B.

16. Informational materials will be disseminated among the following groups:

☒ Public officials ☐ Civic groups or associations
☐ Legislators ☐ Libraries
☐ Government agencies ☐ Educational groups
☒ Newspapers ☐ Nationality groups
☐ Editors ☒ Other *(specify)* See Exhibit B.

17. Indicate language to be used in the informational materials:

☒ English ☒ Other *(specify)* Ukrainian & Russian translations provided to MOJ

10 The term informational materials includes any oral, visual, graphic, written, or pictorial information or matter of any kind, including that published by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or any means or instrumentality of interstate or foreign commerce or otherwise. Informational materials disseminated by an agent of a foreign principal as part of an activity in itself exempt from registration, or an activity which by itself would not require registration, need not be filed pursuant to Section 4(b) of the Act.

VI--EXHIBITS AND ATTACHMENTS

18. (a) The following described exhibits shall be filed with an initial registration statement:

Exhibit A- This exhibit, which is filed on Form NSD-3, sets forth the information required to be disclosed concerning each foreign principal named in Item 7.

Exhibit B- This exhibit, which is filed on Form NSD-4, sets forth the information concerning the agreement or understanding between the registrant and the foreign principal.

(b) An Exhibit C shall be filed when applicable. This exhibit, for which no printed form is provided, consists of a true copy of the charter, articles of incorporation, association, constitution, and bylaws of a registrant that is an organization. A waiver of the requirement to file an Exhibit C may be obtained for good cause shown upon written application to the Assistant Attorney General, National Security Division, U.S. Department of Justice, Washington, DC 20530. (See Rule 201(c) and (d)).

(c) An Exhibit D shall be filed when applicable. This exhibit, for which no printed form is provided, sets forth an account of money collected or received as a result of a fundraising campaign and transmitted for a foreign principal. (See Rule 201 (e)).

VII--EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swear(s) or affirm(s) under penalty of perjury that he/she has (they have) read the information set forth in this registration statement and the attached exhibits and that he/she is (they are) familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her (their) knowledge and belief, except that the undersigned make(s) no representation as to truth or accuracy of the information contained in the attached Short Form Registration Statement(s), if any, insofar as such information is not within his/her (their) personal knowledge.

(Date of signature)	(Print or type name under each signature or provide electronic signature[11])
January 18, 2019	[signature] Eric J. Friedman, Executive Partner

11 This statement shall be signed by the individual agent, if the registrant is an individual, or by a majority of those partners, officers, directors or persons performing similar functions, if the registrant is an organization, except that the organization can, by power of attorney, authorize one or more individuals to execute this statement on its behalf.

5. (e) Locations of branch or local offices.

Locations of branch offices during registration period:

Boston, Massachusetts
Chicago, Illinois
Houston, Texas
Los Angeles, California
Palo Alto, California
Washington, D.C.
Wilmington, Delaware

Beijing, China
Brussels, Belgium
Frankfurt, Germany
Hong Kong
London, England
Moscow, Russia
Munich, Germany
Paris, France
São Paulo, Brazil
Shanghai, China
Singapore
Sydney, Australia
Tokyo, Japan
Toronto, Canada
Vienna, Austria

5. (g) List all partners, officers, directors or persons performing the function of an officer or director of the registrant.

Policy Committee Members as of February 2012	Citizenship	Policy Committee Members Admitted February 2012 - June 2013	Date of Admission	Citizenship	Policy Committee Members Withdrawn February 2012 - June 2013	Date of Withdrawal
Friedman, Eric J. (Executive Partner)	United States	Robinson, Stephen C. (Partner)	July 2012	United States	Brown, Margaret A. (Partner)	July 2012
April, Rand S. (Partner)	United States	Schnell, Paul T. (Partner)	July 2012	United States	Schneirov, Allison R. (Partner)	July 2012
Brown, Margaret A. (Partner)	United States	Valihura, Karen L. (Partner)	July 2012	United States	Uris, Harvey R. (Partner)	July 2012
Buck, Bruce M. (Partner)	United States	McCarthy, Brian J. (Partner)	January 2013	United States	April, Rand S. (Partner)	January 2013
Duwe, Brian W. (Partner)	United States					
Kamiya, Mitsuhiro (Partner)	Japan					
King, Kenton J. (Partner)	United States					
Kling, Lou R. (Partner)	United States					
McGarry, Martha E. (Partner)	United States					
Musoff, Scott D. (Partner)	United States					
Naeve, Clifford M. (Partner)	United States					
Oosterhuis, Paul W. (Partner)	United States					
Reed, Noelle M. (Partner)	United States					
Rogan, Michael P. (Partner)	United States					
Schneirov, Allison R. (Partner)	United States					
Schreiber, Rodd M. (Partner)	United States					
Simpson, Scott V. (Partner)	US & Ireland					
Uris, Harvey R. (Partner)	United States					
Zornow, David M. (Partner)	United States					
Spiegel, Lawrence S. (Partner)	United States					

10. (a) DISBURSEMENT-MONIES

Air Travel	$251,721.42
Hotel / Lodging	$61,341.63
Other Out-of-Town Travel Expenses (e.g., taxis and car services, train fare, parking, and tips)	$13,998.73
Local Travel	$12,837.61
Word Processing / Reproduction	$5,461.66
Research Services (e.g., Lexis-Nexis, Westlaw, and other service fees)	$11,662.43
Translator / Interpreter Fees	$261,269.25
Conference Room Rental Fees	$4,434.31
Books	$99.51
Currency Exchange Fees	$33.30
Messenger / Courier Fees	$555.96
Telecommunications	$5,094.05
Partner / Employee Meals*	$14,172.56

*No U.S. government officials were provided meals, based on a review of the Firm's gift pre-clearance program.

10. (c) **DISBURSEMENTS-POLITICAL CONTRIBUTIONS**

Political contributions made by Skadden Arps Political Action Committee:

Date	Amount or Thing of Value	Political Organization or Candidate	Location of Event
3/5/2012	$2,000.00	CONGRESSMAN WAXMAN CAMPAIGN COMMITTEE	N/A
6/19/2012	$5,000.00	CAMPAIGN FOR OUR COUNTRY	N/A
6/29/2012	$1,000.00	LEVIN FOR CONGRESS	N/A
8/9/2012	$5,000.00	MCCONNELL SENATE COMMITTEE '14	N/A
9/12/2012	$1,000.00	DAVE CAMP FOR CONGRESS	N/A
9/27/2012	$5,000.00	BOEHNER FOR SPEAKER	N/A
10/10/2012	$2,500.00	BEN CARDIN FOR SENATE	N/A
10/11/2012	$2,000.00	VAN HOLLEN FOR CONGRESS	N/A
12/13/2012	$2,000.00	UDALL FOR COLORADO	N/A
3/4/2013	$1,000.00	FRIENDS OF MARY LANDRIEU, INC.	N/A

U.S. Department of Justice

Washington, DC 20530

Exhibit A to Registration Statement Pursuant to the Foreign Agents Registration Act of 1938, as amended

INSTRUCTIONS. Furnish this exhibit for EACH foreign principal listed in an initial statement and for EACH additional foreign principal acquired subsequently. The filing of this document requires the payment of a filing fee as set forth in Rule (d)(1), 28 C.F.R. § 5.5(d)(1). Compliance is accomplished by filing an electronic Exhibit A form at https://www.fara.gov.

Privacy Act Statement. The filing of this document is required by the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide this information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, DC. Statements are also available online at the Registration Unit's webpage: https://www.fara.gov. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: https://www.fara.gov.

Public Reporting Burden. Public reporting burden for this collection of information is estimated to average .49 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Name and Address of Registrant
Skadden, Arps, Slate, Meagher & Flom LLP
4 Times Square
New York, New York 10036

2. Registration No.

3. Name of Foreign Principal
The Ministry of Justice of Ukraine ("MOJ")

4. Principal Address of Foreign Principal
13 Horodetskogo Str., Kyiv, Ukraine 01001

5. Indicate whether your foreign principal is one of the following:

- [x] Government of a foreign country [1]
- [ ] Foreign political party
- [ ] Foreign or domestic organization: If either, check one of the following:
  - [ ] Partnership
  - [ ] Corporation
  - [ ] Association
  - [ ] Committee
  - [ ] Voluntary group
  - [ ] Other *(specify)* ____________
- [ ] Individual-State nationality ____________

6. If the foreign principal is a foreign government, state:

a) Branch or agency represented by the registrant

The Ministry of Justice of Ukraine

b) Name and title of official with whom registrant deals

The retainer memorandum and contracts executed by MOJ were signed by Andriy Sedov, Deputy Minister of Justice.

7. If the foreign principal is a foreign political party, state:

a) Principal address
Not applicable.

b) Name and title of official with whom registrant deals Not applicable.

c) Principal aim Not applicable.

1 "Government of a foreign country," as defined in Section 1(e) of the Act, includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States.

8. If the foreign principal is not a foreign government or a foreign political party:

a) State the nature of the business or activity of this foreign principal.

Not applicable.

b) Is this foreign principal:

Supervised by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☐
Owned by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☐
Directed by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☐
Controlled by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☐
Financed by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☐
Subsidized in part by a foreign government, foreign political party, or other foreign principal	Yes ☐ No ☐

9. Explain fully all items answered "Yes" in Item 8(b). *(If additional space is needed, a full insert page must be used.)*

Not applicable.

10. If the foreign principal is an organization and is not owned or controlled by a foreign government, foreign political party or other foreign principal, state who owns and controls it.

Not applicable.

EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swears or affirms under penalty of perjury that he/she has read the information set forth in this Exhibit A to the registration statement and that he/she is familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her knowledge and belief.

Date of Exhibit A	Name and Title	Signature
January 18, 2019	Eric J. Friedman, Executive Partner	[signature]

OMB No. 1124-0004; Expires May 31, 2020

U.S. Department of Justice

Washington, DC 20530

Exhibit B to Registration Statement Pursuant to the Foreign Agents Registration Act of 1938, as amended

INSTRUCTIONS. A registrant must furnish as an Exhibit B copies of each written agreement and the terms and conditions of each oral agreement with his foreign principal, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances by reason of which the registrant is acting as an agent of a foreign principal. Compliance is accomplished by filing an electronic Exhibit B form at https://www.fara.gov.

Privacy Act Statement. The filing of this document is required for the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide the information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, DC. Statements are also available online at the Registration Unit's webpage: https://www.fara.gov. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: https://www.fara.gov.

Public Reporting Burden. Public reporting burden for this collection of information is estimated to average .33 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Name of Registrant	2. Registration No.
Skadden, Arps, Slate, Meagher & Flom LLP (the "Firm")	

3. Name of Foreign Principal

The Ministry of Justice of Ukraine ("MOJ")

Check Appropriate Box:

4. ☒ The agreement between the registrant and the above-named foreign principal is a formal written contract. If this box is checked, attach a copy of the contract to this exhibit.

5. ☐ There is no formal written contract between the registrant and the foreign principal. The agreement with the above-named foreign principal has resulted from an exchange of correspondence. If this box is checked, attach a copy of all pertinent correspondence, including a copy of any initial proposal which has been adopted by reference in such correspondence.

6. ☐ The agreement or understanding between the registrant and the foreign principal is the result of neither a formal written contract nor an exchange of correspondence between the parties. If this box is checked, give a complete description below of the terms and conditions of the oral agreement or understanding, its duration, the fees and expenses, if any, to be received.

7. Describe fully the nature and method of performance of the above indicated agreement or understanding.

See response to Question 8.

8. Describe fully the activities the registrant engages in or proposes to engage in on behalf of the above foreign principal.

The Firm was engaged by MOJ in 2012 to, among other things, prepare a report (the "Report") on the evidence and procedures used during the 2011 prosecution and trial of former Prime Minister Yulia Tymoshenko and to address various questions regarding its fairness. On or around the same time, the Firm agreed to advise MOJ on rule-of-law and due process issues associated with a second criminal prosecution of Ms. Tymoshenko. The Firm became aware that the Government of Ukraine ("GoU") intended to use the Report in an effort to influence U.S. policy and/or public opinion toward Ukraine. As the Firm drafted the Report, FTI Consulting ("FTI") created a multi-faceted public relations strategy to accompany the release of the Report, which included, among other things, outreach to U.S. media and politicians. The Firm provided FTI with a copy of the Report prior to its release. The Firm also provided a copy of the Report to Vin Weber, a partner at Mercury Public Affairs, prior to its release and connected Mr. Weber with The New York Times by email. The Firm provided a copy of the Report to and/or discussed the Report with The New York Times and The Daily Telegraph (UK) prior to its public release. The GoU officially released the Report to the public on MOJ's website on December 13, 2012. After its release, the Firm provided copies of the Report to, and discussed the Report with, certain other news organizations.

9. Will the activities on behalf of the above foreign principal include political activities as defined in Section 1(o) of the Act and in the footnote below? Yes ☒ No ☐

If yes, describe all such political activities indicating, among other things, the relations, interests or policies to be influenced together with the means to be employed to achieve this purpose.

See response to Question 8.

EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swears or affirms under penalty of perjury that he/she has read the information set forth in this Exhibit B to the registration statement and that he/she is familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her knowledge and belief.

Date of Exhibit B	Name and Title	Signature
January 18, 2019	Eric J. Friedman, Executive Partner	[signature]

Footnote: "Political activity," as defined in Section 1(o) of the Act, means any activity which the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

Exhibit B to Registration Statement – Attachment A

Copies of the Firm's contracts and agreements with MOJ follow.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

DIRECT DIAL
202-371-7400
EMAIL ADDRESS
GREGORY.CRAIG@SKADDEN.COM

CONFIDENTIAL

February 20, 2012

To Whom it May Concern

We are pleased that you are considering retaining Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden Arps" or the "Firm") in connection with the assignment described below (the "Preliminary Engagement").

Scope of Preliminary Engagement

The Preliminary Engagement involves travel for two partners (Mr. Gregory B. Craig and Mr. Clifford Sloan) to Kiev, Ukraine for three days of meetings with interested parties and government decision-makers to discuss the proposed retention of the Firm for a specific assignment (the "Engagement") to occur thereafter. We understand that the general nature of the assignment to be discussed is as follows: The Government of Ukraine is interested in retaining and authorizing the Firm to conduct an independent inquiry of the investigation, prosecution, trial, conviction and sentencing of the former Prime Minister of Ukraine, Ms. Yulia Tymoshenko, and to provide an opinion as to whether the handling of her case violated fundamental standards of substantive or procedural due process.

Scope of the Engagement

The scope of the Engagement – and the terms and conditions governing that Engagement – have not yet been worked out. The purpose of the Preliminary Engagement is to accomplish that objective. It is anticipated that, while in Kiev, Messrs. Craig and Sloan will meet with relevant officials and interested parties to discuss the Tymoshenko case, that they will explore the nature of the assignment and develop an understanding as to the specifics of the Engagement, *e.g.*, the terms and conditions of the retainer, the time frame for the project, the nature of the final work product that will be produced, and any other matters that the parties feel must be addressed for the project to go forward.

The services to be provided by the Firm in connection with the Engagement will encompass those legal services normally and reasonably associated with this type of engagement which the

Firm has been requested to provide and which are consistent with its ethical obligations. While it is understood that the Firm's client in this matter may be a bureau or department or agency of the Government of Ukraine, the Firm is exploring this project with the clear understanding that it will not undertake this assignment without adequate assurances that the Firm will have access to all relevant materials and information that the Firm deems necessary to do its job, and that the Firm will be free to reach its own conclusions based on its own independent work.

Engagement Personnel

Gregory Craig and Clifford Sloan will be responsible for and actively involved in the Engagement. See the attached profiles. Additional lawyers will be added to the Engagement on an as-needed basis. In this regard, we would anticipate using David Foster and Allon Kedem who are associates in the Washington DC office of the firm.

Fees and Expenses

Our fee for the Preliminary Engagement will not exceed $150,000 paid in advance. Our charges will be based on the time that the Firm's lawyers spend on the Preliminary Engagement and our out of pocket expenses. (See below.) In this regard, my current hourly internal time charge is $1150 and Clifford Sloan's is $1050. As part of the Firm's ordinary business practices, hourly time charges are periodically reviewed and revised.

Our fee for the Engagement itself will be determined after the Preliminary Engagement has been completed.

As to billing, we will submit statements for services rendered for payment on a monthly basis. We will charge our monthly bills against the retainer. Our billing statements will include charges and disbursements incurred by us in the course of performing legal services. These items will be billed in accordance with our standard practice as described in the attached summary (see Annex A attached) which may be periodically updated.

For Third Party Payor Situations

We understand that a third party has agreed to pay the fees, charges and disbursements incurred in connection with the Preliminary Engagement. You have consented to the Firm accepting compensation from that third party for representing you. It is understood that, if for any reason does not pay for the legal services, then the Government of Ukraine will be responsible for all fees, charges and disbursements in connection with the Preliminary Engagement. No attorney-client relationship with the third party is being established by virtue of this payment arrangement.

Retainer

An initial retainer will be paid to the Firm at the outset of the Engagement in the amount of $150,000. This retainer will be applied to our professional fees, charges and disbursements. The retainer will be held in an interest-bearing escrow account until it is applied against accrued fees, charges and disbursements. To the extent that the retainer amount exceeds our fees, charges and disbursements upon the completion of the Engagement, we will refund any unused portion. Our monthly statements will indicate the amount remaining of unapplied retainer, if any, but under no circumstances will the cost of the Preliminary Engagement exceed $150,000.

Waivers and Related Matters

The Firm represents a broad base of clients on a variety of legal matters. Accordingly, absent an effective conflicts waiver, conflicts of interest may arise that could adversely affect your ability and the ability of other clients of the Firm to choose the Firm as its counsel and preclude the Firm from representing you or other clients of our Firm in pending or future matters. Given that possibility, we wish to be fair not only to you, but to our other clients as well. Accordingly, this letter will confirm our mutual agreement that the Firm may represent other present or future parties on matters other than those for which it had been or then is engaged by the Government, whether or not on a basis adverse to the Government or any of its present or future affiliates, including in litigation, legal or other proceedings or matters, which are referred to as "Permitted Adverse Representation."

In furtherance of this mutual agreement, the Government agrees that it will not for itself or any other party assert the Firm's representation of the Government or any of its present or future affiliates, either in its representation in the Engagement or in any other matter in which the Government retains the Firm, as a basis for disqualifying the Firm from representing another party in any Permitted Adverse Representation and agrees that any Permitted Adverse Representation does not constitute a breach of any duty owed by the Firm. The waiver provided for in this and the preceding paragraph includes the Firm's ongoing representation of Gazprom. The Government agrees that this paragraph and the preceding one do not expand the scope of the Engagement to encompass affiliates of the Company unless expressly agreed to by the Firm.

Duty of Confidentiality

Our representation in this Preliminary Engagement is premised on the Firm's adherence to its professional obligation not to disclose any confidential information or to use it for another party's benefit without the Government's consent. Such obligations are subject to certain exceptions, including the laws, rules and regulations of certain jurisdictions relating to money laundering and terrorist financing. Under relevant circumstances, the Firm may be under a duty to disclose information to relevant governmental authorities. The Firm may be prohibited from informing you that such a disclosure has been made or the reasons for such disclosure, and we may have to cease work for you for a period of time and not be able to inform you of the reason. Provided

that the Firm acts in the manner set forth in the first sentence of this paragraph and subject to the exceptions noted above, the Government will not for itself or any other party assert that the Firm's possession of such confidential information, even though it may relate to a matter for which the Firm is representing another client [or may be known to someone at the Firm working on the matter (a) is a basis for disqualifying the Firm from representing another of its clients in any matter in which the Government or any other party has an interest; or (b) constitutes a breach of any duty owed by the Firm. In addition, the Firm's failure to share with the Government any confidential information received from another client will not be asserted by the Government as constituting a breach of any duty owed to the Government by the Firm, including any duty regarding information disclosure.

If the Firm receives from any person or entity a subpoena or request for information that is within our custody or control or the custody or control of our agents or representatives, we will, to the extent permitted by applicable law, advise the Government before responding so that the Government has the opportunity to intervene or interpose any objections. Should the Government object to the provision of such information, the Firm may thereafter provide such information only to the extent authorized by the Government or required by a court or other governmental body of competent jurisdiction. The Government agrees to pay the Firm for any services rendered and charges and disbursements incurred in responding to any such request at the Firm's customary billing rates and pursuant to the Firm's charges and disbursements policies.

The Government agrees that the Firm may disclose the fact of this Engagement and related general information to the extent that such disclosure does not convey any confidential or non-public information and it is not adverse to the Company's interests.

Client Files and Retention

In the course of our work on this matter, we shall maintain a physical file relating to the matter. In the file we may place materials received from you with respect to the matter and other materials, including correspondence, memos, filings, drafts, closing sets, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to your representation (the "Client File"). The Client File shall be and will remain your property. We may also place in the file documents containing our attorney work product, mental impressions or notes, and drafts of documents ("Work Product"). You agree that Work Product shall be and remain our property. In addition, electronic records (except those to be proffered to you at the conclusion of a matter as described below) such as e-mail and documents prepared on our word processing system shall not be considered part of your Client File unless it has been printed in hard copy and placed in your physical file, and does not constitute Work Product. Yo agree that we may adopt and implement reasonable retention policies for such electronic records and that we may store or delete such records in our discretion.

At the conclusion of a matter (which shall be defined as the time that our work on any matter subject to this letter has been completed), you shall have the right to take possession of the

original of your Client File (but not including the Work Product). We will be entitled to make physical or electronic copies if we choose. You also agree, upon our proffer, at the conclusion of a matter (whether or not you take possession of the Client File), to take possession of any and all original contracts, stock certificates, deeds and other such important documents or instruments that may be in the Client File, without regard to format, and we shall have no further responsibility with regard to such documents or instruments. If you do not take possession of the Client File at the conclusion of a matter, we will store such file in accordance with our standard retention procedures for a period of at least seven (7) years (the "Retention Period"). Such retention (or maintenance of accounting or other records related to our representation) shall not constitute or be deemed to indicate the presence of a continuing attorney-client relationship. During the time that we store the Client File, you shall have the right to take possession of it at any time that you choose. Subject to the foregoing, we may dispose of the Client File without further notice or obligation to you.

* * *

The provisions of this letter will continue in effect, including if the Firm's representation is ended at your election (which, of course, the Government is free to do at any time) or by the Firm (which would be subject to ethical requirements). In addition, the provisions of this Engagement Letter will apply to future engagements of the Firm by the Government unless we mutually agree otherwise.

This Preliminary Engagement is limited to a specific matter described above. At the time such matter is completed, if we are not at such time engaged to represent you in one or more other matters, our attorney/client relationship will be deemed terminated whether or not we send you a letter to confirm such termination. If you thereafter desire to engage us for a further matter that we are able to and determine to undertake, this letter (and any applicable supplemental writing for such matter) would then become effective.

This agreement and any claim, controversy or dispute arising under or relating to this agreement, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties shall be governed by, and construed in accordance with, the laws of the State of New York. For purposes of this letter, references to Skadden Arps or the Firm include our affiliated law practice entities.

If this letter is satisfactory, please sign a copy and return it to me.

We appreciate the opportunity to work on this project and look forward to doing so.

With best regards.

Sincerely,

Gregory B. Craig

By: ________________________________
Name:
Title:

Dated: As of

Enclosures

ANNEX A

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP AND AFFILIATES
Policy Statement Concerning Charges and Disbursements
Effective April 1, 2010

Skadden Arps bills clients for reasonable charges and disbursements incurred in connection with an engagement. Clients are billed for disbursements based on the actual cost billed by the vendor or in a few cases noted below, at rates derived from internal cost analyses or at rates below or approximating comparable outside vendor charges.

I. __Research Services.__ Charges for LexisNexis and Westlaw are billed at levels below that which would be charged for individual usage on a particular engagement. Clients are billed at rates calculated from an aggregate discounted amount charged to and paid by the Firm to LexisNexis and Westlaw. Thomson Research services are charged based on client usage allocated from actual vendor charges. Charges for other services outside research services are billed at the actual amounts charged by vendors.

The State of Delaware Database provides computer access to a corporations database in Dover, Delaware. The charge for this service is $50 per transaction, which is the average amount charged by outside services.

II. __Travel-Related Expenses.__ Out-of-town travel expenses are billed at actual cost and include air or rail travel, lodging, car rental, taxi or car service, tips and other reasonable miscellaneous costs associated with travel. Corporate and/or negotiated discounted rates are passed on to the client. Specific Firm policies for expenditures relating to out-of-town travel include:

- *__Air Travel.__ Coach class is the standard on most U.S. domestic flights. However, for flights with scheduled flight times longer than 5 hours and international flights business class is generally used.*
- *__Lodging.__ We strive to book overnight accommodations at hotels with which the Firm or the Client has preferred corporate rates.*

Local travel charges include commercial transportation and, when a private car is used, mileage, tolls and parking. Specific policies govern how and when a client is charged for these expenses; these include:

- *Fares for commercial transportation (e.g., car service, taxi, rail) are charged at the actual vendor invoice amount. The charge for private car usage is the IRS rate allowance per mile (or the equivalent outside the United States) plus the actual cost of tolls and parking.*
- *Round-trip transportation to the office is charged for attorneys who work weekends or holidays. Transportation home may be charged on business days when an attorney works past a certain hour (typically 8:30 p.m.) and has worked a minimum of ten hours that day.*
- *Local travel for support staff is charged when a staff member works past a certain hour (typically 8:30 p.m.). Charges are limited by Firm policy and depend on form of transportation and distance traveled.*

III. __Word Processing, Secretarial and other Special Task-Related Services.__ Routine secretarial tasks (correspondence, filing, travel and/or meeting arrangements, etc.) are not charged to clients. Word processing services associated with preparing legal documents are charged at $50 (£25/€35) per hour.

Specialized tasks (such as EDGAR filings or legal assistant services) are recorded in the appropriate billing category (for example, legal assistant services are recorded as fees in "Legal Assistant Support" on bills)

*IV. **Reproduction and Electronic Document Management**. Photocopying services (including copying, collating, tabbing and velo binding) performed in-house are charged at $0.15 (£0.07/€0.11) per page, which represents the average internal cost per page. Color photocopies are charged at $0.80 (£0.40/€0.55) per page (based on outside vendor rates). Photocopying projects performed by outside vendors are billed at the actual invoice amount. Special arrangements can be made for unusually large projects.*

Electronic Data Management services (e.g., scanning, OCR processing, data and image loading/exporting, CD/DVD creation, printing from scanned files, and conversions) performed by outside vendors are billed at the actual invoice amount and those performed in-house are billed at rates comparable to those charged by outside vendors.

*V. **Electronic Communications**. Clients are charged for communications services as follow:*

Telephone Charges. There is no charge for local telephone calls or internal long distance telephone calls. External telephone calls such as collect, cellular calls, credit card, hotel telephone charges and vendor-hosted conference calls are charged at the vendor rate plus applicable taxes and are assigned to the specific matter for which such charges were incurred.

Facsimile Charges. There is no charge for facsimile usage

*VI. **Postage and Courier Services**. Outside messenger and express carrier services are charged at the actual vendor invoice amount which frequently involves discounts negotiated by the Firm. Postage is charged at actual mail rates. On certain occasions, internal staff may be required to act as messengers in which case the staff's applicable hourly rate is charged.*

*VII. **UCC Filing and Searches**. Charges for filings and searches, in most instances, are billed at the flat fee charged by the vendor. Unusual filings and searches will be charged based on vendor invoice.*

*VIII. **Meals**. Business meals are charged at actual cost. Luncheon and dinner meetings at the Firm are charged based on the costs developed by our food service vendor. Breakfast, beverage and snack services at the Firm's offices are not charged, except in unusual circumstances.*

When overtime, weekend or holiday work is required, clients are charged for the actual, reasonable cost of an attorney's meal and, for non-attorneys, a standard amount determined by Firm policy.

*IX. **Direct Payment by Clients of Other Disbursements**. Other major disbursements incurred in connection with an engagement will be paid directly by the client. (Those which are incurred and paid by the Firm will be charged to the client at the actual vendor's invoice amount). Examples of such major disbursements that clients will pay directly include:*

Professional Fees (including disbursements for local counsel, accountants, witnesses and other professionals)

Filing/Court Fees (including disbursements for agency fees for filing documents, standard witness fees, juror fees)

Transcription Fees (including disbursements for outside transcribing agencies and courtroom stenographer transcripts)

Other Disbursements (including any other required out-of-pocket expenses incurred for the successful completion of a matter)

* * * * *

** Fees incurred for attorney and Firm personnel in connection with the Engagement are not covered by this policy.*

Biography



Gregory B. Craig

Partner
Skadden, Arps, Slate, Meagher & Flom LLP
Litigation

A trial lawyer with extensive experience in a wide variety of cases, Greg Craig has successfully defended individuals and entities in a number of high-profile criminal and civil proceedings.

Civil Litigation: Examples of Mr. Craig's civil litigation experience include the following:

In 2000, Mr. Craig successfully represented Elian Gonzalez's father, Juan Miguel Gonzalez, in administrative and court proceedings involving Mr. Gonzalez's effort to regain custody of his son. Also in 2000, Mr. Craig helped lead the trial team representing Warnaco in contract/license litigation with Calvin Klein and his company. In 1999, Mr. Craig represented a major corporation in a trial in which a senior executive brought suit against the company alleging age discrimination. Mr. Craig represented former U.N. Secretary General Kofi Annan in connection with the Volcker Commission's investigation of the Oil-for-Food Programme at the U.N.

During the last 15 years, Mr. Craig has represented a variety of foreign individuals and entities that have required advice and assistance with various U.S. government agencies, including the Consular Bureau in the State Department, the Immigration and Naturalization Service, the Office of Foreign Asset Control in the Treasury Department and the Securities and Exchange Commission. For example, Mr. Craig represented two Chicago policemen in extradition proceedings in federal court in Chicago and brought a declaratory judgment action on their behalf in federal court in Washington, D.C., which resulted in a federal judge finding the U.S. extradition statute of 1848 unconstitutional.

From 1978 to 1979, Mr. Craig represented Alexander Solzhenitsyn in a libel case in federal court in San Francisco and advised him on other matters up through 1983. In 1977, he brought suit on behalf of one of the first (and lead) plaintiffs in the swine flu litigation that was subsequently consolidated by the Judicial Panel on Multidistrict Litigation. From 1973 to 1975, working with Edward Bennett Williams, Mr. Craig represented the clubs of the National Hockey League in antitrust litigation involving the World Hockey Association. From 1972 to 1974, working with Joseph A. Califano, Jr., Mr. Craig represented the Washington Post Company and various reporters in connection with the Watergate scandal and the grand jury investigation of Vice President Spiro Agnew.

(continued)

Washington, D.C. Office

T: 202.371.7400
F 202.661 9100

E: gregory.craig@skadden.com

Education

J.D., Yale Law School, 1972

Diploma in Historical Studies, Cambridge University, 1968

The Lionel DeJersey Harvard Fellowship ("The John Harvard Fellow"), 1968

A.B., Harvard College, 1967 (*magna cum laude*; Phi Beta Kappa)

Bar Admissions

District of Columbia

U.S. Supreme Court

U.S. Courts of Appeals for the District of Columbia, Second, Third, Fourth, Sixth, Seventh and Eleventh Circuits

U.S. District Courts for the District of Columbia, Central and Northern Districts of California, District of Connecticut, Southern District of New York, District of Maryland, Eastern District of Virginia, Central and Eastern Districts of Michigan, Southern District of Florida, and Central District of Alabama

Associations/Affiliations

Member, Board of Trustees, German Marshall Fund of the United States

Biography

Gregory B. Craig

Criminal Litigation: Examples of Mr. Craig's criminal litigation experience include the following:

Mr. Craig has been an active participant in the American criminal justice system for more than 35 years. His career as a criminal defense lawyer began in 1974 when he became the assistant federal public defender for the District of Connecticut. He served in that capacity until September of 1976. Since then, Mr. Craig has represented numerous American corporations and corporate executives who have been the subjects of grand jury investigations and/or who also have been charged with criminal offenses.

In 1975, he represented an individual charged with arson in a six-week trial in federal court in Connecticut. In 1977, working with Edward Bennett Williams, Mr. Craig represented Mr. Richard Helms, a former director of Central Intelligence, who was under grand jury investigation for perjury. That same year, he represented the first FBI agent ever to be indicted, who was accused of illegal wiretapping, breaking and entering, and mail opening in connection with the FBI investigation of the Weather Underground. In 1978 to 1980, also with Edward Bennett Williams, Mr. Craig represented a prominent local businessman charged with bribing a D.C. government official. In 1981 to 1982, working with Vince Fuller, Mr. Craig represented John Hinckley, who was charged with the attempted assassination of President Reagan. In 1983 to 1984, working with Edward Bennett Williams, Mr. Craig represented a prominent businessman who was charged with tax evasion in federal court in Miami. In 1990, Mr. Craig represented Senator Edward M. Kennedy in connection with the trial of his nephew, William Kennedy Smith, in Palm Beach, Florida.

Other Experience:

For five years (1984-1988), he served as Senator Edward M. Kennedy's senior adviser on defense, foreign policy and national security issues.

In 1997, Secretary of State Madeleine Albright appointed Mr. Craig to be one of her senior advisers, and he served the Secretary as her Director of Policy Planning during the years 1997 to 1998.

In September 1998, President Clinton appointed Mr. Craig to be Assistant to the President and Special Counsel in the White House where Mr. Craig led the team that was assembled to defend against impeachment. Mr. Craig also was a member of President Clinton's trial team in the United States Senate and presented the defense with respect to Count One during that trial.

From January 2009 to January 2010, Mr. Craig served as President Obama's White House Counsel.

Mr. Craig also has taught trial practice at both Yale Law School (1975-1976) and Harvard Law School (1981-1984).

Mr. Craig also has served on the boards of many non-governmental organizations and foundations, including The Carnegie Endowment for International Peace (vice chair); the International Human Rights Law Group (chair); the Robert F. Kennedy Memorial; and the American Security Project.

Government Service

White House Counsel (2009-2010)

Assistant to the President and Special Counsel, The White House (1998-1999)

Director of Policy Planning, United States State Department (1997-1998)

Senior Adviser on Defense, Foreign Policy and National Security, Senator Edward Kennedy (1984-1988)

Biography



Cliff Sloan

Partner
Skadden, Arps, Slate, Meagher & Flom LLP
Litigation; Intellectual Property, Media and Entertainment

Mr. Sloan joined Skadden in 2008. An experienced litigator, he has litigated cases at all levels of federal and state courts, including five U.S. Supreme Court arguments, numerous arguments in the U.S. Courts of Appeals, and matters in trial and district courts across the country.

Mr. Sloan's practice focuses on a wide range of litigation and appeals, including cases involving intellectual property, administrative law, commercial disputes, securities law, tax controversies and constitutional issues. He also regularly advises clients on copyright, trademark, new media and First Amendment matters.

His recent litigation experience includes:

- an *en banc* victory, in a case he argued, in the United States Court of Appeals for the First Circuit in an SEC case on the scope of Section 10b-5 liability (*SEC v. Tambone*);
- a victory in a music copyright infringement lawsuit in which he was lead counsel for the Bon Jovi band, as well as more than a dozen media and entertainment defendants, in the United States District Court for the District of Massachusetts (*Steele v. Turner Broadcasting*); and
- a victory in a constitutional challenge to a Hawaii statute targeting an out-of-state company in which he was lead counsel for the company (*HRPT v. Lingle*).

Mr. Sloan has served in high-ranking positions in all three branches of the federal government, including experience as Associate Counsel to the President and Assistant to the Solicitor General. He also has served on the U.S. Court of Appeals for the District of Columbia Circuit's Advisory Committee on Procedures.

Among his other activities, Mr. Sloan has been a leader in Internet litigation. *The National Law Journal* has described him as "an expert on cyberspace," and *The New York Times* singled out his *amicus curiae* brief in a landmark Supreme Court Internet case as "very likely" having a significant impact on the Justices.

From 2000 to 2008, Mr. Sloan served as General Counsel of Washingtonpost.Newsweek Interactive, *The Washington Post Company*'s online subsidiary. He was active in the in-house bar, serving on the board of directors of the Association of Corporate Counsel and on the Advisory Board of *Corporate Pro Bono*. From 2005 to 2008, he also served as Publisher of Slate Magazine, which was acquired by The Washington Post Company in 2005. He has taught the law of cyberspace as an adjunct law professor at Georgetown University Law Center, George Washington University Law School, and American University's Washington College of Law.

Mr. Sloan was selected for inclusion in *The Best Lawyers in America 2012*. He also has received numerous awards, including being named "Appellate Lawyer of the Week" by *The National Law Journal* in 2012 for his representation in a case before the U.S. Supreme Court; one of *Min Magazine*'s "21 Most Intriguing People in Publishing" in 2007; and one of *The National Law Journal*'s "Forty Under Forty" top lawyers in 1995. He currently is a member of the Legal Services Corp.'s *Pro Bono* Task Force. Mr. Sloan is the co-author of *The Great Decision*, a book about the historic Supreme Court case *Marbury v. Madison* (Public Affairs, 2009), and comments regularly on Supreme Court developments.

Washington, D.C. Office

T: 202.371.7040
F: 202.661.8340

E: cliff.sloan@skadden.com

Education

J.D., Harvard Law School (*magna cum laude*), 1984

B.A., Harvard College (*magna cum laude*), 1979

Bar Admissions

District of Columbia

Illinois

Government Experience

Associate Counsel to the President of the United States (1993-1995)

Assistant to the Solicitor General, United States Department of Justice (1989-1991)

Associate Counsel, Office of Independent Counsel, Iran-Contra (1987-1988)

Law Clerk to Justice John Paul Stevens, United States Supreme Court (1985-1986)

Law Clerk to Judge J. Skelly Wright, United States Court of Appeals for the District of Columbia (1984-1985)

Executive Assistant, Congressman Sidney R. Yates (1979-1981)

Media and Internet Experience

General Counsel, Washingtonpost. Newsweek Interactive (2000-2008)

Publisher, *Slate Magazine* (2005-2008)

Vice President, Business Development, Washingtonpost.Newsweek Interactive (2002-2005)

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

FIRM/AFFILIATE OFFICES
BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEW YORK
PALO ALTO
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SÃO PAULO
SHANGHAI
SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

CONFIDENTIAL

April 10, 2012

To: The Ministry of Justice
The Government of Ukraine

From: Gregory B. Craig, Partner

Subject: Retainer Memorandum

Re: Terms and Conditions

We are pleased that you are retaining Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden Arps" or the "Firm") in connection with the assignment described below ("the Engagement"). It is agreed that the terms of this Retainer Memorandum will be incorporated by reference into the Agreement between the Firm and the Ministry of Justice of the Government of Ukraine ("the Ministry") to which this Retainer Memorandum has been attached.

Scope of Engagement

The Engagement involves serving as a rule of law consultant to the Ministry and advising the Ministry on a variety of rule of law issues, including those that may arise before the European Court for Human Rights. The services to be provided by the Firm in connection with the Engagement will encompass those legal services normally and reasonably associated with this type of engagement which the Firm has been requested to provide and which are consistent with its ethical obligations. It is understood that the Firm's client is the Ministry, which is a department of the Government of Ukraine. The Firm is willing to take on this project with the clear understanding that the Firm will have access to all relevant materials and information that the Firm deems necessary to do its job, and that the Firm will be free to reach its own conclusions based on its own independent work. It is understood that the Firm is not being retained to engage in any "political activities" – and will not engage in any such activities – as defined in the Foreign Agent Registration Act (FARA).

Engagement Personnel

Gregory Craig will be responsible for and actively involved in the Engagement. Other lawyers involved in the Engagement will include Clifford Sloan, Mike Loucks and Matthew Cowie. Additional lawyers will be added on an as-needed basis.

Fees and Expenses

Our fees will be based on the time that the Firm's lawyers spend on the Engagement along with our out of pocket expenses. In addition to the terms for payment set forth in the Agreement to which this memorandum is attached, we have agreed to offset our fees for time – charged at our normal hourly rates – and reimbursement of our out-of-pocket expenses against a retainer that has been paid in advance.

As for out-of pocket expenses, see Annex A attached. This may be periodically updated.

Waivers and Related Matters

The Firm represents a broad base of clients on a variety of legal matters. Accordingly, absent an effective conflicts waiver, conflicts of interest may arise that could adversely affect your ability and the ability of other clients of the Firm to choose the Firm as its counsel and preclude the Firm from representing you or other clients of our Firm in pending or future matters. Given that possibility, we wish to be fair not only to you, but to our other clients as well. Accordingly, this letter will confirm our mutual agreement that the Firm may represent other present or future parties on matters other than those for which it had been or then is engaged by the Government, whether or not on a basis adverse to the Ministry or any of its present or future affiliates, including in litigation, legal or other proceedings or matters, which are referred to as "Permitted Adverse Representation."

In furtherance of this mutual agreement, the Ministry agrees that it will not for itself or any other party assert the Firm's representation of the Ministry or any of its present or future affiliates, including any other organs of the Government of Ukraine, either in its representation in the Engagement or in any other matter in which the Ministry retains the Firm, as a basis for disqualifying the Firm from representing another party in any Permitted Adverse Representation and agrees that any Permitted Adverse Representation does not constitute a breach of any duty owed by the Firm. The waiver provided for in this and the preceding paragraph includes the Firm's ongoing representation of OAO Gazprom and any of its present or future affiliates or subsidiaries. The Ministry agrees that this paragraph and the preceding one do not expand the scope of the Engagement to encompass affiliates of the Ministry unless expressly agreed to by the Firm.

Duty of Confidentiality

Our representation in this Engagement is premised on the Firm's adherence to its professional obligation not to disclose any confidential information or to use it for another party's benefit without the Ministry's consent. Such obligations are subject to certain exceptions, including the laws, rules and regulations of certain jurisdictions relating to money laundering and terrorist financing. Provided that the Firm acts in the manner set forth in the first sentence of this paragraph and subject to the exceptions noted above, the Ministry will not for itself or any other

party assert that the Firm's possession of such confidential information, even though it may relate to a matter for which the Firm is representing another client or may be known to someone at the Firm working on the matter (a) is a basis for disqualifying the Firm from representing another of its clients in any matter in which the Ministry or any other party has an interest; or (b) constitutes a breach of any duty owed by the Firm. In addition, the Firm's failure to share with the Ministry any confidential information received from another client will not be asserted by the Ministry as constituting a breach of any duty owed to the Ministry by the Firm, including any duty regarding information disclosure.

If the Firm receives from any person or entity a subpoena or request for information that is within our custody or control or the custody or control of our agents or representatives, we will, to the extent permitted by applicable law, advise the Ministry before responding so that the Ministry has the opportunity to intervene or interpose any objections. Should the Ministry object to the provision of such information, the Firm may thereafter provide such information only to the extent authorized by the Ministry or required by a court or other governmental body of competent jurisdiction. The Ministry agrees to pay the Firm for any services rendered and charges and disbursements incurred in responding to any such request at the Firm's customary billing rates and pursuant to the Firm's charges and disbursements policies.

The Ministry agrees that the Firm may disclose the fact of this Engagement and related general information to the extent that such disclosure does not convey any confidential or non-public information and it is not adverse to the Ministry's interests.

Client Files and Retention

In the course of our work on this matter, we shall maintain a physical file relating to the matter. In the file we may place materials received from you with respect to the matter and other materials, including correspondence, memos, filings, drafts, closing sets, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to your representation (the "Client File"). The Client File shall be and will remain your property. We may also place in the file documents containing our attorney work product, mental impressions or notes, and drafts of documents ("Work Product"). You agree that Work Product shall be and remain our property. In addition, electronic records (except those to be proffered to you at the conclusion of a matter as described below) such as e-mail and documents prepared on our word processing system shall not be considered part of your Client File unless it has been printed in hard copy and placed in your physical file, and does not constitute Work Product. You agree that we may adopt and implement reasonable retention policies for such electronic records and that we may store or delete such records in our discretion.

At the conclusion of a matter (which shall be defined as the time that our work on any matter subject to this letter has been completed), you shall have the right to take possession of the original of your Client File (but not including the Work Product). We will be entitled to make physical or electronic copies if we choose. You also agree, upon our proffer, at the conclusion of

a matter (whether or not you take possession of the Client File), to take possession of any and all original contracts, stock certificates, deeds and other such important documents or instruments that may be in the Client File, without regard to format, and we shall have no further responsibility with regard to such documents or instruments. If you do not take possession of the Client File at the conclusion of a matter, we will store such file in accordance with our standard retention procedures for a period of at least seven (7) years (the "Retention Period"). Such retention (or maintenance of accounting or other records related to our representation) shall not constitute or be deemed to indicate the presence of a continuing attorney-client relationship. During the time that we store the Client File, you shall have the right to take possession of it at any time that you choose. Subject to the foregoing, we may dispose of the Client File without further notice or obligation to you.

* * *

The provisions of this Retainer Memorandum will continue in effect, including if the Firm's representation is ended at your election (which, of course, the Ministry is free to do at any time) or by the Firm (which would be subject to ethical requirements). In addition, the provisions of this Retainer Memorandum will apply to future engagements of the Firm by the Ministry unless we mutually agree otherwise.

This agreement and any claim, controversy or dispute arising under or relating to this agreement, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties shall be governed by, and construed in accordance with, the laws of the State of New York. For purposes of this letter, references to Skadden Arps or the Firm include our affiliated law practice entities.

In the event there is found to be any inconsistency between the terms of this Retainer Memorandum and the Agreement between the Ministry and the Firm to which this Memorandum is attached, the terms of this Retainer Memorandum will take precedence.

If this letter is satisfactory, please sign a copy and return it to me.

We appreciate the opportunity to work on this project and look forward to doing so.

With best regards.

Sincerely,

Gregory B. Craig

By: ______________________________
Name:
Title:

Dated: As of

Enclosures

ANNEX A

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP AND AFFILIATES
Policy Statement Concerning Charges and Disbursements
Effective April 1, 2010

Skadden Arps bills clients for reasonable charges and disbursements incurred in connection with an engagement. Clients are billed for disbursements based on the actual cost billed by the vendor or in a few cases noted below, at rates derived from internal cost analyses or at rates below or approximating comparable outside vendor charges.

I. Research Services. Charges for LexisNexis and Westlaw are billed at levels below that which would be charged for individual usage on a particular engagement. Clients are billed at rates calculated from an aggregate discounted amount charged to and paid by the Firm to LexisNexis and Westlaw. Thomson Research services are charged based on client usage allocated from actual vendor charges. Charges for other services outside research services are billed at the actual amounts charged by vendors.

The State of Delaware Database provides computer access to a corporations database in Dover, Delaware. The charge for this service is $50 per transaction, which is the average amount charged by outside services.

II. Travel-Related Expenses. Out-of-town travel expenses are billed at actual cost and include air or rail travel, lodging, car rental, taxi or car service, tips and other reasonable miscellaneous costs associated with travel. Corporate and/or negotiated discounted rates are passed on to the client. Specific Firm policies for expenditures relating to out-of-town travel include:

- *Air Travel. Coach class is the standard on most U.S. domestic flights. However, for flights with scheduled flight times longer than 5 hours and international flights business class is generally used.*
- *Lodging. We strive to book overnight accommodations at hotels with which the Firm or the Client has preferred corporate rates.*

Local travel charges include commercial transportation and, when a private car is used, mileage, tolls and parking. Specific policies govern how and when a client is charged for these expenses; these include:

- *Fares for commercial transportation (e.g., car service, taxi, rail) are charged at the actual vendor invoice amount. The charge for private car usage is the IRS rate allowance per mile (or the equivalent outside the United States) plus the actual cost of tolls and parking.*
- *Round-trip transportation to the office is charged for attorneys who work weekends or holidays. Transportation home may be charged on business days when an attorney works past a certain hour (typically 8:30 p.m.) and has worked a minimum of ten hours that day.*
- *Local travel for support staff is charged when a staff member works past a certain hour (typically 8:30 p.m.). Charges are limited by Firm policy and depend on form of transportation and distance traveled.*

III. Word Processing, Secretarial and other Special Task-Related Services. Routine secretarial tasks (correspondence, filing, travel and/or meeting arrangements, etc.) are not charged to clients. Word processing services associated with preparing legal documents are charged at $50 (£25/€35) per hour.

Specialized tasks (such as EDGAR filings or legal assistant services) are recorded in the appropriate billing category (for example, legal assistant services are recorded as fees in "Legal Assistant Support" on bills)

IV. Reproduction and Electronic Document Management. *Photocopying services (including copying, collating, tabbing and velo binding) performed in-house are charged at $0.15 (£0.07/€0.11) per page, which represents the average internal cost per page. Color photocopies are charged at $0.80 (£0.40/€0.55) per page (based on outside vendor rates). Photocopying projects performed by outside vendors are billed at the actual invoice amount. Special arrangements can be made for unusually large projects.*

Electronic Data Management services (e.g., scanning, OCR processing, data and image loading/exporting, CD/DVD creation, printing from scanned files, and conversions) performed by outside vendors are billed at the actual invoice amount and those performed in-house are billed at rates comparable to those charged by outside vendors.

V. Electronic Communications. *Clients are charged for communications services as follow:*

Telephone Charges. There is no charge for local telephone calls or internal long distance telephone calls. External telephone calls such as collect, cellular calls, credit card, hotel telephone charges and vendor-hosted conference calls are charged at the vendor rate plus applicable taxes and are assigned to the specific matter for which such charges were incurred.

Facsimile Charges. There is no charge for facsimile usage

VI. Postage and Courier Services. *Outside messenger and express carrier services are charged at the actual vendor invoice amount which frequently involves discounts negotiated by the Firm. Postage is charged at actual mail rates. On certain occasions, internal staff may be required to act as messengers in which case the staff's applicable hourly rate is charged.*

VII. UCC Filing and Searches. *Charges for filings and searches, in most instances, are billed at the flat fee charged by the vendor. Unusual filings and searches will be charged based on vendor invoice.*

VIII. Meals. *Business meals are charged at actual cost. Luncheon and dinner meetings at the Firm are charged based on the costs developed by our food service vendor. Breakfast, beverage and snack services at the Firm's offices are not charged, except in unusual circumstances.*

When overtime, weekend or holiday work is required, clients are charged for the actual, reasonable cost of an attorney's meal and, for non-attorneys, a standard amount determined by Firm policy.

IX. Direct Payment by Clients of Other Disbursements. *Other major disbursements incurred in connection with an engagement will be paid directly by the client. (Those which are incurred and paid by the Firm will be charged to the client at the actual vendor's invoice amount). Examples of such major disbursements that clients will pay directly include:*

Professional Fees (including disbursements for local counsel, accountants, witnesses and other professionals)
Filing/Court Fees (including disbursements for agency fees for filing documents, standard witness fees, juror fees)
Transcription Fees (including disbursements for outside transcribing agencies and courtroom stenographer transcripts)
Other Disbursements (including any other required out-of-pocket expenses incurred for the successful completion of a matter)

* * * * *

* *Fees incurred for attorney and Firm personnel in connection with the Engagement are not covered by this policy.*

ДОГОВІР

м. Київ

«10» April 2012р.

Міністерство юстиції України в особі заступника Міністра юстиції – керівника апарату Сєдова Андрія Юрійовича, що діє на підставі Положення про Міністерство юстиції України, затвердженого Указом Президента України від 6 квітня 2011 року № 395/2011 (далі – Замовник), з однієї сторони,

та

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates (далі – Виконавець), з іншої сторони, разом – Сторони,

уклали цей договір про таке (далі – Договір):

1. Предмет Договору

1.1. Виконавець зобов'язується у 2012 році надати Замовникові послуги з дослідження у галузі права (ДК 016:97 - 73.20.13), а саме експертного дослідження щодо дотримання принципу верховенства права (далі – Послуги), (далі – Послуги), а Замовник – прийняти і оплатити такі Послуги.

1.2. Обсяги закупівлі послуг здійснюються залежно від реального фінансування видатків та потреб замовника.

2. Якість послуг

2.1. Виконавець повинен надати Замовнику послуги, якість яких відповідає умовам:

- результат дослідження повинен у повному обсязі та об'єктивно відображати Європейські та Американські стандарти та практику щодо дотримання принципу Верховенства права;

- дослідження здійснюється з урахуванням особливостей конкретної справи, яка розглядається Європейським судом з прав людини.

3. Ціна Договору

3.1. Ціна цього Договору становить

CONTRACT

Kyiv

«10» April 2012р.

The Ministry of Justice of Ukraine acting on the basis of the Regulation on the Ministry of Justice of Ukraine approved by the Decree of the President of Ukraine of April 6, 2011 No 396/2011, represented by Andriy Yuriyovych Sedov (hereinafter referred to as **the Employer**), on one hand

and

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates (hereinafter referred to as **the Executor**), on the other hand,

hereinafter jointly referred to as **the Parties**,

have concluded the following Contract (hereinafter referred to as **the Contract**):

1. Subject of the Contract

1.1. In 2012, the Executor shall deliver services on legal studies (ДК 016:97 - 73.20.13) to the Employer that include providing advice on the rule of law (hereinafter referred to as **the Services**), and the Employer shall accept and pay for such Services.

1.2. The scope of procurement of the Services shall be made depending on actual funding of the Employer's expenses and needs.

2. Quality of the Services

2.1. The Executor shall provide the Employer with the Services whose quality is to meet the following conditions:

- findings of the study must fully and objectively reflect European and American standards and practice with respect to rule of law;

- the study is to be carried out with regard to specific features of the particular case considered before the European Court of Human Rights.

3. Price of the Contract

3.1. The price of the present Contract shall

95 000,00 грн. (дев'яносто п'ять тисяч грн. 00 коп.) без ПДВ.

3.2. Ціна послуг становить **100,00 грн.** (сто грн. 00 коп.) без ПДВ за одну годину дослідження. Загальна кількість годин дослідження не може перевищувати 950 (дев'ятсот п'ятдесят) годин.

3.3. Виконавець веде облік витраченого часу для здійснення дослідження. На основі цих даних Виконавець складає Звіт та направляє його Замовнику. Звіт має містнти детальний опис послуг, на які витрачено час.

3.4. Ціна цього Договору може бути зменшена за взаємною згодою Сторін.

be 95,000.00 (ninety five thousand) Ukrainian hryvnyas, VAT excluded.

3.2. The price of the Services shall be **100.00** (one hundred.) Ukrainian hryvnyas, VAT excluded, per one hour of study. Total hours shall not exceed 950 (nine hundred fifty) hours.

3.3. The Executor shall keep accounting of hours expended to carry out the study. Based on those data, the Executor shall draw up the Report and submit it to the Employer. The Report shall contain the detailed description of the services time had been expended in.

3.4. The price of the present Contract may be reduced by mutual consent of the Parties.

4. Порядок здійснення оплати

4.1. Розрахунки проводяться шляхом перерахування Замовником коштів на розрахунковий рахунок Виконавця після пред'явлення Виконавцем рахунка на оплату послуг (далі – рахунок) за наявності коштів на розрахунковому рахунку Замовника.

4.2. Оплата за виконані послуги здійснюється після підписання акта прийому-передачі наданих послуг з відстрочкою платежу до 30 банківських днів.

4.3. Якщо Замовник порушує умови оплати, зазначені у п. 4.2., з причин затримки бюджетного фінансування, така затримка вважається викликаною форс-мажорними обставинами і не тягне за собою будь-якої відповідальності.

4. Payment procedure

4.1. The payment shall be made by the Employer by way of bank transfer to the bank account of the Executor upon presentation by the Executor of the bill for services (hereinafter referred to as **the bill**) subject to availability of the funds on the bank account of the Employer.

4.2. Payment for services shall be made after signing the statement of transfer and acceptance of the services delivered, with delay of payment up to 30 bank days.

4.3. In the case the Employer violates the payment conditions as referred to in § 4.2. due to delays in budget funding, such a delay shall be considered as one caused by force majeure circumstances and shall not entail liability of any kind.

5. Надання послуг

5.1. Строк надання послуг за цим Договором починається з ___ травня 2012 р. і має бути завершено до 31 грудня 2012 року згідно з порядком, наведеним нижче.

5.2. Замовник передає Виконавцеві копії матеріалів справи стосовно якої необхідно провести дослідження та яка знаходить на розгляді Європейського суду із переліком питань, які підлягають дослідженню.

5.3. Виконавець здійснює дослідження прецедентної практики Європейського суду з прав людини у справах щодо дотримання вимог Конвенції

5. Provision of services

5.1. The period of provision of services under the present Contract shall start from 22 May 2012 and shall end by 31 December 2012, in accordance with the procedure set out below.

5.2. The Employer shall submit to the Executor the copy of the case-file which is to be analysed and which is being considered before the European Court of Human Rights, together with the list of questions to be studied.

5.3. The Executor shall carry out the study of the case-law of the European Court of Human Rights concerning compliance with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms as

про захист прав людини і основоположних свобод, а також документів органів Ради Європи з урахування особливостей конкретної справи, яка знаходиться на розгляді Європейського суду.

5.4. За результатами дослідження Виконавець готує меморандум, в якому відображаються позиція Європейського суду чи органів Ради Європи щодо питань, які є предметом дослідження, а також висновки щодо можливості їх застосування для підготовки позиції Уряду України з огляду на обставини конкретної справи.

5.5. Передача Виконавцеві копій матеріалів справи, а також перелік питань, які необхідно дослідити оформлюється протоколом.

5.6. Виконавець здійснює дослідження упродовж строку, що не перевищує 1 (одного) місяця.

5.7. Замовник нараховує Виконавцеві штрафні санкції у розмірі вартості однієї години здійснення дослідження за кожен день порушення строку проведення дослідження, визначеного пунктом 5.6. Договору.

5.8. Місце надання послуг: Міністерство юстиції України, м. Київ, вул. Городецького, 13.

6. Права та обов'язки сторін

6.1. Замовник зобов'язаний:

6.1.1. Надати Виконавцеві копії матеріалів справи, а також перелік питань, які необхідно дослідити.

6.1.2. Приймати надані послуги згідно з актом прийому-передачі наданих послуг (якщо надані послуги відповідають умовам цього Договору).

6.1.3. Своєчасно та в повному обсязі сплачувати за надані послуги;

6.2. Замовник має право:

6.2.1. Контролювати надання послуг у строки, встановлені цим Договором. Здійснювати перевірку якості дослідження та відповідності дослідження вимогам, встановленим у п. 2.1.

6.2.2. Достроково розірвати Договір та вимагати відшкодування збитків у разі, якщо надання Виконавцем послуг у строк, передбачений цим договором, стає явно неможливим, або ж якщо під час надання послуг стане очевидним, що вони не будуть ... ... цілком або на

well as of the documents of the institutions of the Council of Europe with regard to specific features of the particular case being considered before the European Court of Human Rights.

5.4. In accordance with the findings, the Executor shall prepare the memorandum that is to reflect the position of the European Court of Human Rights or the institutions of the Council of Europe on issues studied; the Executor shall also draw up the conclusions on possibilities of their application in the process of drawing up the position of the Ukrainian Government taking into account circumstances of the particular case..

5.5. The submission of the copies of the case-file and of the list of questions to be studied to the Executor shall be formalised by means of the relevant record.

5.6. The Executor shall carry out the study within the period that is not to exceed 1 (one) month.

5.7. In the case of failure to meet a date, the Employer shall fine the Executor in the amount of cost of one hour per each day outside the time-limit for the study set out in § 5.6. of the Contract.

5.8. The Service location shall be the Ministry of Justice of Ukraine, City of Kyiv, 13 Horodetskogo St..

6. Rights and obligations of the Parties

6.1. The Employer shall:

6.1.1. Submit copies of case-files together with the list of questions to be studied to the Executor.

6.1.2. Accept the services made according to the statement of transfer and acceptance of the services delivered (if the services delivered comply with the conditions of the present Contract).

6.1.3. Pay for services delivered timely and in full;

6.2. The Employer shall have the right to:

6.2.1. Check that the services are provided within the time-limits established by the present Contract, verify the quality of the study and its compliance with the requirements set out in § 2.1.

6.2.2. Terminate ahead of schedule the present Contract and require payment of damage in the case if provision of services by the Executor within the time-limits established by the present Contract becomes clearly impossible or if during provision of the services it becomes quite clear that they are not going to be provided

відповідному рівні.

6.2.3. Зменшувати обсяг закупівлі надання послуг та загальну вартість цього Договору залежно від реального фінансування видатків. У такому разі Сторони вносять відповідні зміни до цього Договору;

6.2.4. Повернути рахунок Виконавцю без здійснення оплати в разі неналежного оформлення документів (відсутність печатки, підписів тощо).

6.3. Виконавець зобов'язаний:

6.3.1. Забезпечити надання послуг у строки, встановлені цим Договором;

6.3.2. Забезпечити надання послуг, якість яких відповідає умовам, встановленим розділом 2 цього Договору.

6.3.3. Надати Замовнику результат дослідження в електронному та друкованому вигляді, а також повернути копії матеріалів справи.

6.3.4. Не розголошувати відомості, що містяться у матеріалах справи, які йому було передано для здійснення дослідження.

6.3.5. Дотримуватися умов цього Договору і нести відповідальність за їх невиконання.

6.4. Виконавець має право:

6.4.1. Своєчасно та в повному обсязі отримувати плату за надані послуги;

6.4.2. На дострокове надання послуг за письмовим погодженням Замовника.

7. Відповідальність сторін

7.1. У разі невиконання або неналежного виконання своїх зобов'язань за Договором Сторони несуть відповідальність, передбачену цим Договором та чинним законодавством України.

8. Обставини непереборної сили

8.1. Сторони звільняються від відповідальності за невиконання або неналежне виконання зобов'язань за цим Договором у разі виникнення обставин непереборної сили, які не існували під час укладання Договору та виникли поза волею Сторін (аварія, катастрофа, стихійне лихо, епідемія, епізоотія, війна тощо).

8.2. Сторона, що не може виконувати зобов'язання за цим Договором внаслідок дії обставин непереборної сили, повинна не

properly or at the adequate level.

6.2.3. Reduce the scope of procurement of services and the price of the present Contract depending on actual funding of the expenses. In such an event the Parties shall make relevant amendments to the Contract;

6.2.4. Return the bill to the Executor without making payment in the case of improper drawing up of documents (absence of the seal, signatures etc.).

6.3. The Executor shall:

6.3.1. Provide services within the time-limits established by the present Contract;

6.3.2. Provide services whose quality complies with the requirements set out in Section 2 of the present Contract.

6.3.3. Provide the Employer with the findings of the study both in electronic and printed form and return the copies of the case-files.

6.3.4. Not make public information contained in the case-file submitted for the study.

6.3.5. Comply with the provisions of the present Contract and bear responsibility for failure to comply with them.

6.4. The Executor shall have the right to:

6.4.1. Receive payment for the services provided timely and in full;

6.4.2. Provide services ahead of time, upon the written consent of the Employer.

7. Responsibility of the Parties

7.1. In the case of failure to meet their obligations or in case of improper execution of their obligations under the present Contract, the Parties shall be held liable as provided for by the present Contract and by the Ukrainian legislation in force.

8. Force majeure

8.1. The Parties shall not be held liable for failure to meet their obligations or in the case of improper execution of their obligations under the present Contract in the case of emergence of force majeure circumstances that did not exist at the time of conclusion of the present Contract and have arisen beyond the control of the Parties (accident, crash, natural disaster, epidemics, epizootic outbreak, war etc.).

8.2. The Party that is unable to meet its obligations under the present Contract as result of force majeure circumstances, shall no later than

пізніше ніж протягом семи днів з моменту їх виникнення повідомити про це іншу Сторону у письмовій формі.

8.3. Доказом виникнення обставин непереборної сили та строку їх дії є відповідні документи, що видані ТПП України, а також іншими уповноваженими державними органами.

8.4. У разі коли строк дії обставин непереборної сили продовжується більше ніж тридцять днів, кожна із Сторін в установленому порядку має право розірвати цей Договір.

9. Вирішення спорів

9.1. У випадку виникнення спорів або розбіжностей Сторони зобов'язуються вирішувати їх шляхом взаємних переговорів та консультацій.

10. Строк дії Договору

10.1. Цей Договір набирає чинності з моменту його підписання і скріплення печатками Сторін та діє до повного виконання Сторонами своїх зобов'язань, але не пізніше 31 грудня 2012 року.

10.2. Закінчення строку Договору не звільняє Сторони від відповідальності за його порушення, яке мало місце під час дії Договору.

11. Інші умови Договору

11.1. Будь-які зміни та доповнення до цього Договору набирають чинності з моменту належного оформлення Сторонами відповідної Додаткової угоди до цього Договору.

11.2. Одностороння відмова від виконання Сторонами своїх зобов'язань, які передбачені цим Договором, не допускається, крім випадків, передбачених цим Договором та чинним законодавством України.

11.3. У випадках, не передбачених цим Договором, Сторони керуються чинним законодавством України.

11.4. Цей Договір укладається у двох примірниках, що мають однакову юридичну силу, по одному для кожної Сторони.

within seven days from the moment of emergence thereof, notify the other Party in written form.

8.3. Relevant documents issued by the Ukrainian Chamber of Commerce and by the other competent bodies shall be the proof of force majeure circumstances and of the period they would persist.

8.4. In the case when force majeure circumstances continue over thirty days, any of the Parties may terminate the present Contract in accordance with the established procedure.

9. Dispute settlement

9.1. In the case of disputes or clash of opinions, the Parties shall undertake to resolve them by way of negotiations and consultations.

10. Duration of the Contract

10.1. The present Contract shall come into effect from the moment of its signature and sealing by the Parties and shall remain in effect until full execution by the Parties of their obligations but not later than 31 December 2012.

10.2. The expiry of Contract's duration shall not spare the Parties of responsibility for its violation that took place during the period of its being in effect.

11. Other provisions

11.1. Any amendments or supplements to the present Contract shall come into effect from the moment of proper formalisation by the Parties of any additional Agreement to the present Contract.

11.2. Unilateral refusal by any of the Parties to execute its obligations provided for in the present Contract shall not be allowed unless in case provided for in the present Contract or in the Ukrainian legislation in force.

11.3. In the cases not provided for in the present Contract, the Parties shall act pursuant to the Ukrainian legislation in force.

11.4. The present Contract is drawn up in two copies, each copy for each Party, that have equal legal force.

12. Місцезнаходження та банківські реквізити сторін

ЗАМОВНИК:

Міністерство юстиції України
Юридична адреса: 01001, м. Київ,
вул. Городецького, 13
Фізична адреса: м. Київ,
пров. Рильський, 10
Тел.: 271-15-72
код за ЄДРПОУ 00015622
Р/рахунок 35213036000030
в Державному Казначействі України
МФО 820172

Заступник Міністра юстиції – керівник апарату

____________ **А.Ю.Сєдов**

М.П.

ВИКОНАВЕЦЬ:

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates
68, rue du Faubourg Saint-Honoré
75008 Paris, France
T: 331.55.27.11.00
F: 331.55.27.21.99
Partner

____________ **Gregory B. Craig**
Seal

12. Legal addresses and bank data of the Parties

THE EMPLOYER:

Ministry of Justice of Ukraine
Legal address: 13, Horodetskogo St., Kyiv, 01001, Ukraine
Physical address: 10, Rylskiy Lane, Kyiv
Tel.: 380-44-279-48-56
Fax: 380-44-279-38-74
C/a 35213036000030
in the DKU
MFO 820172
Identification code 00015622

Deputy Minister - Head of Apparat of the Ministry of Justice

____________ **Mr. Sedov A.Y.**

Seal

THE EXECUTOR:

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates
68, rue du Faubourg Saint-Honoré
75008 Paris, France
T: 331.55.27.11.00
F: 331.55.27.21.99
Partner

____________ **Gregory B. Craig**
Seal

This document was signed in March 2013.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

FIRM/AFFILIATE OFFICES
BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEW YORK
PALO ALTO
WILMINGTON
BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SÃO PAULO
SHANGHAI
SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

CONFIDENTIAL

April 5, 2012

To: The Ministry of Justice
The Government of Ukraine

From: Gregory B. Craig, Partner

Subject: Retainer Memorandum

Re: Terms and Conditions

We are pleased that you are retaining Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden Arps" or the "Firm") in connection with the assignment described below ("the Engagement"). It is agreed that the terms of this Retainer Memorandum will be incorporated by reference into the Agreement between the Firm and the Ministry of Justice of the Government of Ukraine ("the Ministry") to which this Retainer Memorandum has been attached.

Scope of Engagement

The Engagement involves conducting an inquiry and writing an independent report on the evidence and procedures used during the prosecution and trial of former Prime Minister Yulia Tymoshenko, applying Western standards of due process and rule of law. The services to be provided by the Firm in connection with the Engagement will encompass those legal services normally and reasonably associated with this type of engagement which the Firm has been requested to provide and which are consistent with its ethical obligations. It is understood that the Firm's client is the Ministry, which is a department of the Government of Ukraine. The Firm is willing to take on this project with the clear understanding that the Firm will have access to all relevant materials and information that the Firm deems necessary to do its job, and that the Firm will be free to reach its own conclusions based on its own independent work. It is understood that the Firm is not being retained to engage in any "political activities" – and will not engage in any such activities – as defined in the Foreign Agent Registration Act (FARA).

Engagement Personnel

Gregory Craig will be responsible for and actively involved in the Engagement. Other lawyers involved in the Engagement will include Clifford Sloan. Additional lawyers will be added on an as-needed basis.

Fees and Expenses

Our fees will be based on the time that the Firm's lawyers spend on the Engagement along with our out of pocket expenses. In addition to the terms for payment set forth in the Agreement to which this memorandum is attached, we have agreed to offset our fees for time – charged at our normal hourly rates – and reimbursement of our out-of-pocket expenses against a retainer that has been paid in advance.

As for out-of pocket expenses, see Annex A attached. This may be periodically updated.

Waivers and Related Matters

The Firm represents a broad base of clients on a variety of legal matters. Accordingly, absent an effective conflicts waiver, conflicts of interest may arise that could adversely affect your ability and the ability of other clients of the Firm to choose the Firm as its counsel and preclude the Firm from representing you or other clients of our Firm in pending or future matters. Given that possibility, we wish to be fair not only to you, but to our other clients as well. Accordingly, this letter will confirm our mutual agreement that the Firm may represent other present or future parties on matters other than those for which it had been or then is engaged by the Government, whether or not on a basis adverse to the Ministry or any of its present or future affiliates, including in litigation, legal or other proceedings or matters, which are referred to as "Permitted Adverse Representation."

In furtherance of this mutual agreement, the Ministry agrees that it will not for itself or any other party assert the Firm's representation of the Ministry or any of its present or future affiliates, including any other organs of the Government of Ukraine, either in its representation in the Engagement or in any other matter in which the Ministry retains the Firm, as a basis for disqualifying the Firm from representing another party in any Permitted Adverse Representation and agrees that any Permitted Adverse Representation does not constitute a breach of any duty owed by the Firm. The waiver provided for in this and the preceding paragraph includes the Firm's ongoing representation of OAO Gazprom and any of its present or future affiliates or subsidiaries. The Ministry agrees that this paragraph and the preceding one do not expand the scope of the Engagement to encompass affiliates of the Ministry unless expressly agreed to by the Firm.

Duty of Confidentiality

Our representation in this Engagement is premised on the Firm's adherence to its professional obligation not to disclose any confidential information or to use it for another party's benefit without the Ministry's consent. Such obligations are subject to certain exceptions, including the laws, rules and regulations of certain jurisdictions relating to money laundering and terrorist financing. Provided that the Firm acts in the manner set forth in the first sentence of this paragraph and subject to the exceptions noted above, the Ministry will not for itself or any other

party assert that the Firm's possession of such confidential information, even though it may relate to a matter for which the Firm is representing another client or may be known to someone at the Firm working on the matter (a) is a basis for disqualifying the Firm from representing another of its clients in any matter in which the Ministry or any other party has an interest; or (b) constitutes a breach of any duty owed by the Firm. In addition, the Firm's failure to share with the Ministry any confidential information received from another client will not be asserted by the Ministry as constituting a breach of any duty owed to the Ministry by the Firm, including any duty regarding information disclosure.

If the Firm receives from any person or entity a subpoena or request for information that is within our custody or control or the custody or control of our agents or representatives, we will, to the extent permitted by applicable law, advise the Ministry before responding so that the Ministry has the opportunity to intervene or interpose any objections. Should the Ministry object to the provision of such information, the Firm may thereafter provide such information only to the extent authorized by the Ministry or required by a court or other governmental body of competent jurisdiction. The Ministry agrees to pay the Firm for any services rendered and charges and disbursements incurred in responding to any such request at the Firm's customary billing rates and pursuant to the Firm's charges and disbursements policies.

The Ministry agrees that the Firm may disclose the fact of this Engagement and related general information to the extent that such disclosure does not convey any confidential or non-public information and it is not adverse to the Ministry's interests.

Client Files and Retention

In the course of our work on this matter, we shall maintain a physical file relating to the matter. In the file we may place materials received from you with respect to the matter and other materials, including correspondence, memos, filings, drafts, closing sets, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to your representation (the "Client File"). The Client File shall be and will remain your property. We may also place in the file documents containing our attorney work product, mental impressions or notes, and drafts of documents ("Work Product"). You agree that Work Product shall be and remain our property. In addition, electronic records (except those to be proffered to you at the conclusion of a matter as described below) such as e-mail and documents prepared on our word processing system shall not be considered part of your Client File unless it has been printed in hard copy and placed in your physical file, and does not constitute Work Product. You agree that we may adopt and implement reasonable retention policies for such electronic records and that we may store or delete such records in our discretion.

At the conclusion of a matter (which shall be defined as the time that our work on any matter subject to this letter has been completed), you shall have the right to take possession of the original of your Client File (but not including the Work Product). We will be entitled to make physical or electronic copies if we choose. You also agree, upon our proffer, at the conclusion of

This document was signed in March 2013.

a matter (whether or not you take possession of the Client File), to take possession of any and all original contracts, stock certificates, deeds and other such important documents or instruments that may be in the Client File, without regard to format, and we shall have no further responsibility with regard to such documents or instruments. If you do not take possession of the Client File at the conclusion of a matter, we will store such file in accordance with our standard retention procedures for a period of at least seven (7) years (the "Retention Period"). Such retention (or maintenance of accounting or other records related to our representation) shall not constitute or be deemed to indicate the presence of a continuing attorney-client relationship. During the time that we store the Client File, you shall have the right to take possession of it at any time that you choose. Subject to the foregoing, we may dispose of the Client File without further notice or obligation to you.

* * *

The provisions of this Retainer Memorandum will continue in effect, including if the Firm's representation is ended at your election (which, of course, the Ministry is free to do at any time) or by the Firm (which would be subject to ethical requirements). In addition, the provisions of this Retainer Memorandum will apply to future engagements of the Firm by the Ministry unless we mutually agree otherwise.

This agreement and any claim, controversy or dispute arising under or relating to this agreement, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties shall be governed by, and construed in accordance with, the laws of the State of New York. For purposes of this letter, references to Skadden Arps or the Firm include our affiliated law practice entities.

In the event there is found to be any inconsistency between the terms of this Retainer Memorandum and the Agreement between the Ministry and the Firm to which this Memorandum is attached, the terms of this Retainer Memorandum will take precedence.

This document was signed in March 2013.

If this letter is satisfactory, please sign a copy and return it to me.

We appreciate the opportunity to work on this project and look forward to doing so.

With best regards.

Sincerely,

Gregory B. Craig

Skadden, Arps, Slate, Meagher & Flom LLP

By: ______________________

Name: Andriy S[illegible]

Title: Deputy Minister of Justice

Dated: As of

МІНІСТЕРСТВО ЮСТИЦІЇ УКРАЇНИ №1

Enclosures

ANNEX A

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP AND AFFILIATES
Policy Statement Concerning Charges and Disbursements
Effective April 1, 2010

Skadden Arps bills clients for reasonable charges and disbursements incurred in connection with an engagement. Clients are billed for disbursements based on the actual cost billed by the vendor or in a few cases noted below, at rates derived from internal cost analyses or at rates below or approximating comparable outside vendor charges.

---

*I. **Research Services.** Charges for LexisNexis and Westlaw are billed at levels below that which would be charged for individual usage on a particular engagement. Clients are billed at rates calculated from an aggregate discounted amount charged to and paid by the Firm to LexisNexis and Westlaw. Thomson Research services are charged based on client usage allocated from actual vendor charges. Charges for other services outside research services are billed at the actual amounts charged by vendors.*

The State of Delaware Database provides computer access to a corporations database in Dover, Delaware. The charge for this service is $50 per transaction, which is the average amount charged by outside services.

*II. **Travel-Related Expenses.** Out-of-town travel expenses are billed at actual cost and include air or rail travel, lodging, car rental, taxi or car service, tips and other reasonable miscellaneous costs associated with travel. Corporate and/or negotiated discounted rates are passed on to the client. Specific Firm policies for expenditures relating to out-of-town travel include:*

- *Air Travel. Coach class is the standard on most U.S. domestic flights. However, for flights with scheduled flight times longer than 5 hours and international flights business class is generally used.*
- *Lodging. We strive to book overnight accommodations at hotels with which the Firm or the Client has preferred corporate rates.*

Local travel charges include commercial transportation and, when a private car is used, mileage, tolls and parking. Specific policies govern how and when a client is charged for these expenses; these include:

- *Fares for commercial transportation (e.g., car service, taxi, rail) are charged at the actual vendor invoice amount. The charge for private car usage is the IRS rate allowance per mile (or the equivalent outside the United States) plus the actual cost of tolls and parking.*
- *Round-trip transportation to the office is charged for attorneys who work weekends or holidays. Transportation home may be charged on business days when an attorney works past a certain hour (typically 8:30 p.m.) and has worked a minimum of ten hours that day.*
- *Local travel for support staff is charged when a staff member works past a certain hour (typically 8:30 p.m.). Charges are limited by Firm policy and depend on form of transportation and distance traveled.*

*III. **Word Processing, Secretarial and other Special Task-Related Services.** Routine secretarial tasks (correspondence, filing, travel and/or meeting arrangements, etc.) are not charged to clients. Word processing services associated with preparing legal documents are charged at $50 (£25/€35) per hour.*

Specialized tasks (such as EDGAR filings or legal assistant services) are recorded in the appropriate billing category (for example, legal assistant services are recorded as fees in "Legal Assistant Support" on bills)

*IV. **Reproduction and Electronic Document Management**. Photocopying services (including copying, collating, tabbing and velo binding) performed in-house are charged at $0.15 (£0.07/€0.11) per page, which represents the average internal cost per page. Color photocopies are charged at $0.80 (£0.40/€0.55) per page (based on outside vendor rates). Photocopying projects performed by outside vendors are billed at the actual invoice amount. Special arrangements can be made for unusually large projects.*

Electronic Data Management services (e.g., scanning, OCR processing, data and image loading/exporting, CD/DVD creation, printing from scanned files, and conversions) performed by outside vendors are billed at the actual invoice amount and those performed in-house are billed at rates comparable to those charged by outside vendors.

*V. **Electronic Communications**. Clients are charged for communications services as follow:*

Telephone Charges. There is no charge for local telephone calls or internal long distance telephone calls. External telephone calls such as collect, cellular calls, credit card, hotel telephone charges and vendor-hosted conference calls are charged at the vendor rate plus applicable taxes and are assigned to the specific matter for which such charges were incurred.

Facsimile Charges. There is no charge for facsimile usage

*VI. **Postage and Courier Services**. Outside messenger and express carrier services are charged at the actual vendor invoice amount which frequently involves discounts negotiated by the Firm. Postage is charged at actual mail rates. On certain occasions, internal staff may be required to act as messengers in which case the staff's applicable hourly rate is charged.*

*VII. **UCC Filing and Searches**. Charges for filings and searches, in most instances, are billed at the flat fee charged by the vendor. Unusual filings and searches will be charged based on vendor invoice.*

*VIII. **Meals**. Business meals are charged at actual cost. Luncheon and dinner meetings at the Firm are charged based on the costs developed by our food service vendor. Breakfast, beverage and snack services at the Firm's offices are not charged, except in unusual circumstances.*

When overtime, weekend or holiday work is required, clients are charged for the actual, reasonable cost of an attorney's meal and, for non-attorneys, a standard amount determined by Firm policy.

*IX. **Direct Payment by Clients of Other Disbursements**. Other major disbursements incurred in connection with an engagement will be paid directly by the client. (Those which are incurred and paid by the Firm will be charged to the client at the actual vendor's invoice amount). Examples of such major disbursements that clients will pay directly include:*

Professional Fees (including disbursements for local counsel, accountants, witnesses and other professionals)

Filing/Court Fees (including disbursements for agency fees for filing documents, standard witness fees, juror fees)

Transcription Fees (including disbursements for outside transcribing agencies and courtroom stenographer transcripts)

Other Disbursements (including any other required out-of-pocket expenses incurred for the successful completion of a matter)

* * * * *

* Fees incurred for attorney and Firm personnel in connection with the Engagement are not covered by this policy.

ДОГОВІР 11-03/2013

м. Київ
«11» 03 2013р.

Міністерство юстиції України в особі заступника Міністра юстиції – керівника апарату Сєдова Андрія Юрійовича, що діє на підставі Положення про Міністерство юстиції України, затвердженого Указом Президента України від 6 квітня 2011 року № 395/2011 (далі – Замовник), з однієї сторони,

та

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates (далі – Виконавець), з іншої сторони, разом – Сторони,

уклали цей договір про таке (далі – Договір):

1. Предмет Договору

1.1. Виконавець зобов'язується передати Замовникові послуги з дослідження у галузі права (ДК 016-2010 - 72.20.10), а саме послуги щодо наукового дослідження та експериментального розроблення у сфері суспільних наук щодо дотримання принципу верховенства права (далі – Послуги), а також звіт, який описаний в п.5.3. а Замовник – прийняти і оплатити такі Послуги.

1.2. Обсяги закупівлі послуг здійснюються залежно від реального фінансування видатків та потреб замовника.

2. Якість послуг

2.1. Виконавець повинен надати Замовнику послуги, якість яких відповідає умовам:

- результат дослідження повинен у повному обсязі незалежно та об'єктивно відображати Європейські та Американські стандарти та практику

CONTRACT

Kyiv
«11» 03 2013р.

The Ministry of Justice of Ukraine acting on the basis of the Regulation on the Ministry of Justice of Ukraine approved by the Decree of the President of Ukraine of April 6, 2011 No 396/2011, represented by Andriy Yuriyovych Sedov (hereinafter referred to as **the Employer**), on one hand

and

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates (hereinafter referred to as **the Executor**), on the other hand,

hereinafter jointly referred to as **the Parties**,

have concluded the following Contract (hereinafter referred to as **the Contract**):

1. Subject of the Contract

1.1. The Executor shall deliver services on legal studies (ДК 016-2010 - 72.20.10) to the Employer that include services on scientific studies and experimental elaboration in the field of social science on the rule of law (hereinafter referred to as **the Services**), as well as a report which is described below in clause 5.3 to and the Employer shall accept and pay for such Services.

1.2. The scope of procurement of the Services shall be made depending on actual funding of the Employer's expenses and needs.

2. Quality of the Services

2.1. The Executor shall provide the Employer with the Services whose quality is to meet the following condition:

- findings of the study must fully and independently and objectively reflect European and American standards and practice with respect to rule of law.

щодо дотримання принципу Верховенства права.

3. Ціна Договору

3.1. Ціна цього Договору становить 10 200 **000,00 грн**. (Десять мільйонів двісті тисяч грн. 00 коп.) без ПДВ.

3.2. Кінцева вартість послуг буде визначена виходячи з кількості витрачених годин та вартості однієї години, яка розраховується на підставі стандартних тарифів Виконавця.

3.3. Виконавець веде облік витраченого часу для здійснення дослідження. На основі цих даних Виконавець складає Звіт та направляє його Замовнику. Звіт має містити детальний опис послуг, на які витрачено час.

3.4. Ціна цього Договору може бути зменшена за взаємною згодою Сторін.

3. Price of the Contract

3.1. The price of the present Contract shall be 10 200 000, 00 (ten million two hundred thousand) Ukrainian hryvnyas, VAT excluded.

3.2. The final price of the Services shall be **determined in accordance with the number of hours worked and the hourly rate which is calculated according tothe basic rates of the Executor.**

3.3. The Executor shall keep accounting of hours expended to carry out the study. Based on those data, the Executor shall draw up the Report and submit it to the Employer. The Report shall contain the detailed description of the services time had been expended in.

3.4. The price of the present Contract may be reduced by mutual consent of the Parties.

4. Порядок здійснення оплати

4.1. Розрахунки проводяться шляхом перерахування Замовником коштів на розрахунковий рахунок Виконавця після пред'явлення Виконавцем рахунка на оплату послуг (далі – рахунок) за наявності коштів на розрахунковому рахунку Замовника.

4.2. Оплата за виконані послуги здійснюється після підписання акта прийому-передачі наданих послуг..

4. Payment procedure

4.1. The payment shall be made by the Employer by way of bank transfer to the bank account of the Executor upon presentation by the Executor of the bill for services (hereinafter referred to as **the bill**) subject to availability of the funds on the bank account of the Employer.

4.2. Payment for services shall be made after signing the statement of transfer and acceptance of the services delivered.

5. Надання послуг

5.1. Офіційний строк передачі звіту за цим Договором починається з 01 березня 2013 року і має бути завершено до 31 грудня 2013 року згідно з порядком, наведеним нижче.

5.2. Замовник передає Виконавцеві копії матеріалів справи стосовно якої необхідно провести дослідження та яка знаходить на розгляді Європейського суду із переліком питань, які підлягають дослідженню.

5. Provision of services

5.1. The official delivery of the report under the present contract shall occur between 1st March 2013 and 31 December 2013, in accordance with the procedure set out below.

5.2. The Employer shall submit to the Executor the copy of the case-file which is to be analysed and which is being considered before the European Court of Human Rights, together with the list of questions to be studied.

5.3. Виконавець передає незалежний звіт , який ґрунтується на аналізі фактів та обставин, пов'язаних з обвинуваченням та судовим розглядом справи колишнього прем'єр-міністра Юлії Тимошенко в контексті Західних стандартів дотримання принципу верховенства права. .

Сторони розуміють, що звіт було підготовлено в 2012 році.

5.4. Місце надання послуг: Міністерство юстиції України, м. Київ, вул. Городецького, 13.

6. Права та обов'язки сторін

6.1. Замовник зобов'язаний:

6.1.1. Надати Виконавцеві копії матеріалів справи, а також перелік питань, які необхідно дослідити.

6.1.2. Приймати надані послуги згідно з актом прийому-передачі наданих послуг (якщо надані послуги відповідають умовам цього Договору).

6.1.3. Своєчасно та в повному обсязі сплачувати за надані послуги;

6.2. Замовник має право:

6.2.1. Контролювати надання послуг у строки, встановлені цим Договором. Здійснювати перевірку якості дослідження та відповідності дослідження вимогам, встановленим у п. 2.1.

6.2.2. Достроково розірвати Договір та вимагати відшкодування збитків у разі, якщо надання Виконавцем послуг у строк, передбачений цим договором, стає явно неможливим, або ж якщо під час надання послуг стане очевидним, що вони не будуть надані належним чином або на відповідному рівні.

6.2.3. Зменшувати обсяг закупівлі надання послуг та загальну вартість цього Договору залежно від реального фінансування видатків. У такому разі Сторони вносять відповідні зміни до цього Договору;

6.2.4. Повернути рахунок Виконавцю без здійснення оплати в разі неналежного оформлення документів (відсутність печатки, підписів тощо).

5.3. The Executor shall deliver an independent report on the evidence and procedures used during the prosecution and trial of former Prime Minister Yuliya Tymoshenko, applying Western standards of due process and rule of law.

The Parties understand that the work on the report was completed in 2012.

5.4. The Service location shall be the Ministry of Justice of Ukraine, City of Kyiv, 13 Horodetskogo St.

6. Rights and obligations of the Parties

6.1. The Employer shall:

6.1.1. Submit copies of case-files together with the list of questions to be studied to the Executor.

6.1.2. Accept the services made according to the statement of transfer and acceptance of the services delivered (if the services delivered comply with the conditions of the present Contract).

6.1.3. Pay for services delivered timely and in full;

6.2. The Employer shall have the right to:

6.2.1. Check that the services are provided within the time-limits established by the present Contract, verify the quality of the study and its compliance with the requirements set out in § 2.1.

6.2.2. Terminate ahead of schedule the present Contract and require payment of damage in the case if provision of services by the Executor within the time-limits established by the present Contract becomes clearly impossible or if during provision of the services it becomes quite clear that they are not going to be provided properly or at the adequate level.

6.2.3. Reduce the scope of procurement of services and the price of the present Contract depending on actual funding of the expenses. In such an event the Parties shall make relevant amendments to the Contract;

6.2.4. Return the bill to the Executor without making payment in the case of improper drawing up of documents (absence of the seal, signatures etc.).

6.3. Виконавець зобов'язаний:

6.3.1. Забезпечити надання послуг у строки, встановлені цим Договором;

6.3.2. Забезпечити надання послуг, якість яких відповідає умовам, встановленим розділом 2 цього Договору.

6.3.3. Надати Замовнику результат дослідження в електронному та друкованому вигляді, а також повернути копії матеріалів справи.

6.3.4. Не розголошувати відомості, що містяться у матеріалах справи, які йому було передано для здійснення дослідження.

6.3.5. Дотримуватися умов цього Договору і нести відповідальність за їх невиконання.

6.4. Виконавець має право:

6.4.1. Своєчасно та в повному обсязі отримувати плату за надані послуги;

6.4.2. На дострокове надання послуг за письмовим погодженням Замовника.

7. Відповідальність сторін

7.1. У разі невиконання або неналежного виконання своїх зобов'язань за Договором Сторони несуть відповідальність, передбачену цим Договором та чинним законодавством України.

8. Обставини непереборної сили

8.1. Сторони звільняються від відповідальності за невиконання або неналежне виконання зобов'язань за цим Договором у разі виникнення обставин непереборної сили, які не існували під час укладання Договору та виникли поза волею Сторін (аварія, катастрофа, стихійне лихо, епідемія, епізоотія, війна тощо).

8.2. Сторона, що не може виконувати зобов'язання за цим Договором внаслідок дії обставин непереборної сили, повинна не пізніше

6.3. The Executor shall:

6.3.1. Provide services within the time-limits established by the present Contract;

6.3.2. Provide services whose quality complies with the requirements set out in Section 2 of the present Contract.

6.3.3. Provide the Employer with the findings of the study both in electronic and printed form and return the copies of the case-files.

6.3.4. Not make public information contained in the case-file submitted for the study.

6.3.5. Comply with the provisions of the present Contract and bear responsibility for failure to comply with them.

6.4. The Executor shall have the right to:

6.4.1. Receive payment for the services provided timely and in full;

6.4.2. Provide services ahead of time, upon the written consent of the Employer.

7. Responsibility of the Parties

7.1. In the case of failure to meet their obligations or in case of improper execution of their obligations under the present Contract, the Parties shall be held liable as provided for by the present Contract and by the Ukrainian legislation in force.

8. Force majeure

8.1. The Parties shall not be held liable for failure to meet their obligations or in the case of improper execution of their obligations under the present Contract in the case of emergence of force majeure circumstances that did not exist at the time of conclusion of the present Contract and have arisen beyond the control of the Parties (accident, crash, natural disaster, epidemics, epizootic outbreak, war etc.).

8.2. The Party that is unable to meet its obligations under the present Contract as result of force majeure circumstances, shall,

ніж протягом семи днів з моменту їх виникнення повідомити про це іншу Сторону у письмовій формі.

8.3. Доказом виникнення обставин непереборної сили та строку їх дії є відповідні документи, що видані ТПП України, а також іншими уповноваженими державними органами.

8.4. У разі коли строк дії обставин непереборної сили продовжується більше ніж тридцять днів, кожна із Сторін в установленому порядку має право розірвати цей Договір.

9. Вирішення спорів

9.1. У випадку виникнення спорів або розбіжностей Сторони зобов'язуються вирішувати їх шляхом взаємних переговорів та консультацій.

10. Строк дії Договору

10.1. Цей Договір набирає чинності з моменту його підписання і скріплення печатками Сторін та діє до повного виконання Сторонами своїх зобов'язань, але не пізніше 31 грудня 2013 року.

10.2. Закінчення строку Договору не звільняє Сторони від відповідальності за його порушення, яке мало місце під час дії Договору.

11. Інші умови Договору

11.1. Будь-які зміни та доповнення до цього Договору набирають чинності з моменту належного оформлення Сторонами відповідної Додаткової угоди до цього Договору.

11.2. Одностороння відмова від виконання Сторонами своїх зобов'язань, які передбачені цим Договором, не допускається, крім випадків, передбачених цим Договором та чинним законодавством України.

11.3. У випадках, не передбачених цим Договором, Сторони керуються чинним законодавством України.

11.4. Цей Договір укладається у двох примірниках, що мають однакову

no later than within seven days from the moment of emergence thereof, notify the other Party in written form.

8.3. Relevant documents issued by the Ukrainian Chamber of Commerce and by the other competent bodies shall be the proof of force majeure circumstances and of the period they would persist.

8.4. In the case when force majeure circumstances continue over thirty days, any of the Parties may terminate the present Contract in accordance with the established procedure.

9. Dispute settlement

9.1. In the case of disputes or clash of opinions, the Parties shall undertake to resolve them by way of negotiations and consultations.

10. Duration of the Contract

10.1. The present Contract shall come into effect from the moment of its signature and sealing by the Parties and shall remain in effect until full execution by the Parties of their obligations but not later than 31 December 2013.

10.2. The expiry of Contract's duration shall not spare the Parties of responsibility for its violation that took place during the period of its being in effect.

11. Other provisions

11.1. Any amendments or supplements to the present Contract shall come into effect from the moment of proper formalisation by the Parties of any additional Agreement to the present Contract.

11.2. Unilateral refusal by any of the Parties to execute its obligations provided for in the present Contract shall not be allowed unless in case provided for in the present Contract or in the Ukrainian legislation in force.

11.3. In the cases not provided for in the present Contract, the Parties shall act pursuant to the Ukrainian legislation in force.

11.4. The present Contract is drawn up in two copies, each copy for each Party, that have equal legal force.

юридичну силу, по одному для кожної Сторони.

12. Місцезнаходження та банківські реквізити сторін

ЗАМОВНИК:

Міністерство юстиції України
Юридична адреса: 01001, м. Київ,
вул. Городецького, 13
Фізична адреса: м. Київ,
пров. Рильський, 10
Тел.: 380-44-271-15-68
Тел.: 380-44-271-16-67
код за ЄДРПОУ 00015622
Р/рахунок 35213036000030
в Державному Казначействі України
МФО 820172

Заступник Міністра юстиції – керівник апарату

_______________ **А.Ю.Сєдов**

Seal

ВИКОНАВЕЦЬ:

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates
68, rue du Faubourg Saint-Honoré
75008 Paris, France
T: 331.55.27.11.00
F: 331.55.27.21.99
Partner

_______________ **Gregory B. Craig**

Seal

Skadden, Arps, Slate, Meagher & Flom LLP

12. Legal addresses and bank data of the Parties

THE EMPLOYER:

Ministry of Justice of Ukraine
Legal address: 13, Horodetskogo St., Kyiv,
01001, Ukraine
Physical address: 10, Rylskiy Lane, Kyiv
Tel.: 380-44-271-15-68
Tel.: 380-44-271-16-67
Identification code 00015622
C/a 35213036000030
in the DKU
MFO 820172

Deputy Minister - Head of Apparat of the Ministry of Justice

_______________ **Mr. Sedov A.Y.**

Seal

THE EXECUTOR:

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates
68, rue du Faubourg Saint-Honoré
75008 Paris, France
T: 331.55.27.11.00
F: 331.55.27.21.99
Partner

_______________ **Gregory B. Craig**

Seal

Skadden, Arps, Slate, Meagher & Flom LLP

Waiver Request for Exhibit C to Registration Statement

As the registrant is a very large organization, the disclosure required under Section 2(a)(2) of the Act would be voluminous. The Firm hereby requests an exemption under Rule 201(d) and asks that the requirement for filing an Exhibit C be waived.

Skadden, Arps, Slate, Meagher & Flom LLP

By: ______________________

Eric J. Friedman
Executive Partner
Date: January 18, 2019

U.S. Department of Justice

Washington, DC 20530

OMB No. 1124-0002; Expires May 31, 2020

Supplemental Statement
Pursuant to the Foreign Agents Registration Act of 1938, as amended

For Six Month Period Ending Period: 2/20/2012 - 6/30/2013
(Insert date)

I - REGISTRANT

1. (a) Name of Registrant (b) Registration No.

Skadden, Arps, Slate, Meagher & Flom LLP ("Firm")

(c) Business Address(es) of Registrant
4 Times Square
New York, New York 10036

2. Has there been a change in the information previously furnished in connection with the following?

(a) If an individual:

(1) Residence address(es) Yes ☐ No ☐
(2) Citizenship Yes ☐ No ☐
(3) Occupation Yes ☐ No ☐

(b) If an organization:

(1) Name Yes ☐ No ☒
(2) Ownership or control Yes ☐ No ☒
(3) Branch offices Yes ☐ No ☒

(c) Explain fully all changes, if any, indicated in Items (a) and (b) above.

IF THE REGISTRANT IS AN INDIVIDUAL, OMIT RESPONSE TO ITEMS 3, 4, AND 5(a).

3. If you have previously filed Exhibit C[1], state whether any changes therein have occurred during this 6 month reporting period.

Yes ☐ No ☐

If yes, have you filed an amendment to the Exhibit C? Yes ☐ No ☐

If no, please attach the required amendment.

1 The Exhibit C, for which no printed form is provided, consists of a true copy of the charter, articles of incorporation, association, and by laws of a registrant that is an organization. (A waiver of the requirement to file an Exhibit C may be obtained for good cause upon written application to the Assistant Attorney General, National Security Division, U.S. Department of Justice, Washington, DC 20530.)

4. (a) Have any persons ceased acting as partners, officers, directors or similar officials of the registrant during this 6 month reporting period?

Yes ☒ No ☐

If yes, furnish the following information:

Name	Position	Date Connection Ended
See response to Question 5(g) on Registration Statement.		

(b) Have any persons become partners, officers, directors or similar officials during this 6 month reporting period?

Yes ☒ No ☐

If yes, furnish the following information:

Name	Residence Address	Citizenship	Position	Date Assumed
See response to Question 5(g) on Registration Statement.				

5. (a) Has any person named in Item 4(b) rendered services directly in furtherance of the interests of any foreign principal?

Yes ☐ No ☒

If yes, identify each such person and describe the service rendered.

(b) During this six month reporting period, has the registrant hired as employees or in any other capacity, any persons who rendered or will render services to the registrant directly in furtherance of the interests of any foreign principal(s) in other than a clerical or secretarial, or in a related or similar capacity? Yes ☐ No ☒

Name	Residence Address	Citizenship	Position	Date Assumed

(c) Have any employees or individuals, who have filed a short form registration statement, terminated their employment or connection with the registrant during this 6 month reporting period? Yes ☒ No ☐

If yes, furnish the following information:

Name	Position or Connection	Date Terminated
Clifford Sloan	Partner	6/28/13 (Returned 1/1/15)

(d) Have any employees or individuals, who have filed a short form registration statement, terminated their connection with any foreign principal during this 6 month reporting period? Yes ☐ No ☒

If yes, furnish the following information:

Name	Position or Connection	Foreign Principal	Date Terminated

6. Have short form registration statements been filed by all of the persons named in Items 5(a) and 5(b) of the supplemental statement?

Yes ☐ No ☐

If no, list names of persons who have not filed the required statement.

Not applicable.

II - FOREIGN PRINCIPAL

7. Has your connection with any foreign principal ended during this 6 month reporting period? Yes ☒ No ☐
If yes, furnish the following information:

Foreign Principal	Date of Termination
The Ministry of Justice of Ukraine ("MOJ")	6/30/2013

*The Firm hereby terminates its registration as of 6/30/2013 with this Supplemental Statement.

8. Have you acquired any new foreign principal(s)[2] during this 6 month reporting period? Yes ☐ No ☒
If yes, furnish th following information:

Name and Address of Foreign Principal(s)	Date Acquired

9. In addition to those named in Items 7 and 8, if any, list foreign principal(s)[2] whom you continued to represent during the 6 month reporting period.

None.

10. (a) Have you filed exhibits for the newly acquired foreign principal(s), if any, listed in Item 8?
Exhibit A[3] Yes ☐ No ☐
Exhibit B[4] Yes ☐ No ☐
If no, please attach the required exhibit.

(b) Have there been any changes in the Exhibits A and B previously filed for any foreign principal whom you represented during this six month period? Yes ☐ No ☒
If yes, have you filed an amendment to these exhibits? Yes ☐ No ☐
If no, please attach the required amendment.

2 The term "foreign principal" includes, in addition to those defined in Section 1(b) of the Act, an individual organization any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign government, foreign political party, foreign organization or foreign individual. (See Rule 100(a) (9)). A registrant who represents more than one foreign principal is required to list in the statements he files under the Act only those principals for whom he is not entitled to claim exemption under Section 3 of the Act. (See Rule 208.)

3 The Exhibit A, which is filed on Form NSD-3, sets forth the information required to be disclosed concerning each foreign principal.

4 The Exhibit B, which is filed on Form NSD-4, sets forth the information concerning the agreement or understanding between the registrant and the foreign principal.

III - ACTIVITIES

11. During this 6 month reporting period, have you engaged in any activities for or rendered any services to any foreign principal named in Items 7, 8, or 9 of this statement? Yes ☒ No ☐

    If yes, identify each foreign principal and describe in full detail your activities and services:

    See Exhibit B to Registration Statement.

12. During this 6 month reporting period, have you on behalf of any foreign principal engaged in political activity[5] as defined below?
    Yes ☒ No ☐

    If yes, identify each such foreign principal and describe in full detail all such political activity, indicating, among other things, the relations, interests and policies sought to be influenced and the means employed to achieve this purpose. If the registrant arranged, sponsored or delivered speeches, lectures or radio and TV broadcasts, give details as to dates, places of delivery, names of speakers and subject matter.

    See Exhibit B to Registration Statement.

13. In addition to the above described activities, if any, have you engaged in activity on your own behalf which benefits your foreign principal(s)? Yes ☐ No ☒

    If yes, describe fully.

5 "Political activity," as defined in Section 1(o) of the Act, means any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting or changing the domestic or foreign policies of the United States or with reference to political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

IV - FINANCIAL INFORMATION

14. (a) **RECEIPTS-MONIES**
During this 6 month reporting period, have you received from any foreign principal named in Items 7, 8, or 9 of this statement, or from any other source, for or in the interests of any such foreign principal, any contributions, income or money either as compensation or otherwise? Yes ☒ No ☐

If no, explain why.

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies.[6]

Date	From Whom	Purpose	Amount
See response to Question 9(a) on Registration Statement.			

Total

(b) **RECEIPTS - FUNDRAISING CAMPAIGN**
During this 6 month reporting period, have you received, as part of a fundraising campaign[7], any money on behalf of any foreign principal named in Items 7, 8, or 9 of this statement? Yes ☐ No ☒

If yes, have you filed an Exhibit D[8] to your registration? Yes ☐ No ☐

If yes, indicate the date the Exhibit D was filed. Date ____________________

(c) **RECEIPTS-THINGS OF VALUE**
During this 6 month reporting period, have you received any thing of value[9] other than money from any foreign principal named in Items 7, 8, or 9 of this statement, or from any other source, for or in the interests of any such foreign principal?
Yes ☐ No ☒

If yes, furnish the following information:

Foreign Principal	Date Received	Thing of Value	Purpose

6, 7 A registrant is required to file an Exhibit D if he collects or receives contributions, loans, moneys, or other things of value for a foreign principal, as part of a fundraising campaign. (See Rule 201(e)).
8 An Exhibit D, for which no printed form is provided, sets forth an account of money collected or received as a result of a fundraising campaign and transmitted for a foreign principal.
9 Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks," and the like.

15. (a) **DISBURSEMENTS-MONIES**

During this 6 month reporting period, have you

(1) disbursed or expended monies in connection with activity on behalf of any foreign principal named in Items 7, 8, or 9 of this statement? Yes ☒ No ☐

(2) transmitted monies to any such foreign principal? Yes ☐ No ☒

If no, explain in full detail why there were no disbursements made on behalf of any foreign principal.

As noted in Q.9(a) on the Reg. Statement, the Firm returned escrow funds in excess of fees and actual expenses incurred to MOJ on/around 6/14/17; however, it is not treating that as a transmittal for purposes of Question 15(a)(2).

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies, including monies transmitted, if any, to each foreign principal.

Date	To Whom	Purpose	Amount
See Attachment C to Registration Statement.			

Total

(b) **DISBURSEMENTS-THINGS OF VALUE**

During this 6 month reporting period, have you disposed of anything of value[10] other than money in furtherance of or in connection with activities on behalf of any foreign principal named in Items 7, 8, or 9 of this statement?

Yes ☐ No ☒

If yes, furnish the following information:

Date	Recipient	Foreign Principal	Thing of Value	Purpose

(c) **DISBURSEMENTS-POLITICAL CONTRIBUTIONS**

During this 6 month reporting period, have you from your own funds and on your own behalf either directly or through any other person, made any contributions of money or other things of value[11] in connection with an election to any political office, or in connection with any primary election, convention, or caucus held to select candidates for political office?

Yes ☒ No ☐

If yes, furnish the following information:

Date	Amount or Thing of Value	Political Organization or Candidate	Location of Event
See Attachment D to Registration Statement.			

10, 11 Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks," and the like.

V - INFORMATIONAL MATERIALS

16. (a) During this 6 month reporting period, did you prepare, disseminate or cause to be disseminated any informational materials?[12]
Yes ☒ No ☐
If Yes, go to Item 17.
(b) If you answered No to Item 16(a), do you disseminate any material in connection with your registration?
Yes ☐ No ☐
If Yes, please forward the materials disseminated during the six month period to the Registration Unit for review.

17. Identify each such foreign principal.
MOJ

*A copy of the informational materials is attached hereto as Attachment A.

18. During this 6 month reporting period, has any foreign principal established a budget or allocated a specified sum of money to finance your activities in preparing or disseminating informational materials? Yes ☐ No ☒
If yes, identify each such foreign principal, specify amount, and indicate for what period of time.
See response to Question 13 on Registration Statement.

19. During this 6 month reporting period, did your activities in preparing, disseminating or causing the dissemination of informational materials include the use of any of the following:

☐ Radio or TV broadcasts ☒ Magazine or newspaper ☐ Motion picture films ☐ Letters or telegrams
☐ Advertising campaigns ☒ Press releases ☐ Pamphlets or other publications ☐ Lectures or speeches
☒ Other *(specify)* See Exhibit B to Registration Statement.

Electronic Communications

☒ Email
☐ Website URL(s): ____
☐ Social media websites URL(s): ____
☒ Other *(specify)* See Exhibit B to Registration Statement.

20. During this 6 month reporting period, did you disseminate or cause to be disseminated informational materials among any of the following groups:

☒ Public officials ☒ Newspapers ☐ Libraries
☐ Legislators ☐ Editors ☐ Educational institutions
☐ Government agencies ☐ Civic groups or associations ☐ Nationality groups
☒ Other *(specify)* See Exhibit B to Registration Statement.

21. What language was used in the informational materials:
☒ English ☒ Other *(specify)* Ukr. & Rus. translations provided to MOJ

22. Did you file with the Registration Unit, U.S. Department of Justice a copy of each item of such informational materials disseminated or caused to be disseminated during this 6 month reporting period? Yes ☐ No ☒

23. Did you label each item of such informational materials with the statement required by Section 4(b) of the Act?
Yes ☐ No ☒

12 The term informational materials includes any oral, visual, graphic, written, or pictorial information or matter of any kind, including that published by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or any means or instrumentality of interstate or foreign commerce or otherwise. Informational materials disseminated by an agent of a foreign principal as part of an activity in itself exempt from registration, or an activity which by itself would not require registration, need not be filed pursuant to Section 4(b) of the Act.

VI - EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swear(s) or affirm(s) under penalty of perjury that he/she has (they have) read the information set forth in this registration statement and the attached exhibits and that he/she is (they are) familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her (their) knowledge and belief, except that the undersigned make(s) no representation as to truth or accuracy of the information contained in the attached Short Form Registration Statement(s), if any, insofar as such information is not within his/her (their) personal knowledge.

(Date of signature)	(Print or type name under each signature or provide electronic signature[13])
January 18, 2019	Eric J. Friedman, Executive Partner

13 This statement shall be signed by the individual agent, if the registrant is an individual, or by a majority of those partners, officers, directors or persons performing similar functions, if the registrant is an organization, except that the organization can, by power of attorney, authorize one or more individuals to execute this statement on its behalf.

Supplemental Statement – Attachment A

THE TYMOSHENKO CASE

SKADDEN ARPS SLATE MEAGHER & FLOM LLP

SEPTEMBER 2012

TABLE OF CONTENTS

Executive Summary

In 2011, former Ukrainian Prime Minister Yulia Tymoshenko was tried and convicted of abusing her official powers and causing grave damage. This Report examines the events leading up to and including her prosecution and trial, and analyzes those events applying Western standards of due process and the rule of law. The Report identifies and discusses the major factual and legal disputes involved in the case. The Report has been written based on a review of original documents, trial transcripts, and interviews with those who participated in the process, which reflect the following conclusions:

Factual Conclusions

- The economy of Ukraine is deeply dependent on natural gas, most of which it purchases from Russia. At the same time, Russia relies on Ukraine to facilitate the transit of its gas to Europe. The two nations have a long history of disputes over the purchase price for gas (paid to Russia) and the transit price (paid to Ukraine). *Pgs. 10-13.*

- In late 2008, Tymoshenko and other members of the Ukrainian government negotiated with their Russian counterparts over a market-based approach to pricing. The parties failed to reach an agreement before their prior contract expired on December 31. *Pgs. 14-20.*

- Beginning in early January 2009, Russia cut off the flow of gas into Ukraine, which threatened the Ukrainian economy, as well as European nations dependent on the flow of Russian gas across Ukraine. *Pgs. 21-24.*

- On January 17, 2009, Tymoshenko met with Vladimir Putin (then Russia's Prime Minister), after which they announced that a deal to end the standoff had been reached. The precise terms of the agreement between Tymoshenko and Putin were not disclosed at that time. *Pgs. 25, 47-48.*

- Tymoshenko arranged for the preparation of a document—entitled "The Directives"—which she signed and which set forth the major elements of her agreement with Putin. *Pgs. 28-30.*

- On January 19, Tymoshenko's deputy (Oleksandr Turchinov) convened a meeting of Ukraine's Cabinet of Ministers to provide information and seek support for the terms that Tymoshenko had negotiated with Putin as they appeared in the Directives. Whether Tymoshenko and Turchinov intended to obtain a vote of approval from the Cabinet, or whether instead they sought merely to inform the Cabinet about the progress of negotiations and to ask generally for the Cabinet's support, is a subject of dispute. It is clear, however, that the Cabinet of Ministers did not vote on the proposal. *Pgs. 26-27, 50-57.*

- Also on January 19, Tymoshenko traveled to Moscow where she met Oleh Dubyna, the head of Naftogaz, Ukraine's state-owned energy company. In the House of the Government of the Russian Federation in the Kremlin, Tymoshenko again met with Putin one-on-one. She emerged from that meeting and informed

Dubyna that he would participate in a press conference at which the parties would sign an agreement that embodied the terms that she had negotiated with Putin. Dubyna insisted on receiving a writing from the Prime Minister before he would sign the agreement. *Pgs. 27-29, 57-59.*

- Tymoshenko produced an official looking document with her signature. The official seal of the Cabinet of Ministers appeared on the document. The document discussed the deal and laid out some of the terms of the proposed agreement that she had negotiated with Putin. Several facets of this incident are in dispute, including to whom Tymoshenko handed the document, what she did or did not say, and the legal effect of the document. What is clear is that Tymoshenko used the document to facilitate Naftogaz's agreement with Gazprom according to the terms that she had negotiated. *Pgs. 28-30, 62-66.*

- Following receipt of the document, Dubyna and his deputy signed 10-year agreements on behalf of Naftogaz with Gazprom, Russia's state-owned energy company. These contracts included:

    - *Gas Price*: For the first quarter of 2009, Naftogaz agreed to pay Gazprom $360 per thousand cubic meters (kcm) of gas purchased. Thereafter, the price was set by a formula, one input of which was the average market price paid by other European nations. During the first-year of the contract (*i.e.*, 2009), the formula price included a 20 percent discount. *Pgs. 31-32.*

    - *Transit Price*: For 2009, Gazprom agreed to pay Naftogaz $1.7/kcm for every 100 kilometers of gas transported across Ukraine. After that, the price was to be determined by a formula that adjusts the current year's transit price based on (among other things) the prior year's price and inflation. *Pg. 32-33.*

- The average price paid by Naftogaz in 2009 for the purchase of gas was $232.98/kcm. The prior year, Ukraine had paid $179.50/kcm. The 2009 transit price of $1.7 was the same as the prior year's transit price. *Pgs. 33, 72.*

- In 2009, Naftogaz used 3.639 billion cubic meters of gas to facilitate the transit of Russian gas to Europe. The prosecution contends that the increase in price between 2008 and 2009 made this gas $194,625,386.70 more expensive. *Pgs. 72-74.*

- Tymoshenko was tried and convicted for her role in bringing about the January 19 agreement. The Court concluded that Tymoshenko had exceeded her authority by approving an agreement that violated existing Ukrainian law; by directing Dubyna to sign the agreement without the approval of Ukraine's Cabinet of Ministers; and by deceiving Dubyna into thinking that the Cabinet had already approved the agreement when in reality it had not. The Court also concluded that her conduct caused grave damage to the State of Ukraine. *Pgs. 37, 45-46, 67-81.*

<u>Conclusions Regarding Tymoshenko's Trial</u>

- *The Court's Opinion:* Although many facts were in sharp dispute at the trial and conflicting evidence was offered on many issues, the Court, as the finder of fact,

based its findings on evidence before the court and, in some instances, on inferences that the Court drew from that evidence. Among other things, the Court found that Tymoshenko overstepped her authority by drafting Directives that set forth the terms that she and Putin had agreed to; by ordering the head of Naftogaz to sign an agreement with Gazprom in the absence of approval from the Cabinet of Ministers; by threatening to fire the head of Naftogaz if he did not sign the agreement; and by deceiving him into believing that the Cabinet had approved the agreement. *Pgs. 45-81.*

- *Opportunity to Prepare a Defense*: Tymoshenko raises concerns about the opportunity she and her attorney had to prepare adequately for her defense. She claims (1) she had insufficient time to review the 4000-page case file; and (2) she had insufficient time to prepare for trial. On both issues, the facts are in dispute. In the United States, trial courts have considerable discretion to manage criminal proceedings. We believe that, looking at this case, most American trial courts would have given the defendant more time to prepare her defense. It is unlikely, however, that based on this record, an American appellate court would find a due process violation and reverse the conviction—unless there were evidence to support Tymoshenko's allegation that the prosecution intentionally disrupted her preparations and distracted her during the time immediately preceding the trial. Other than her allegations, we are unaware of any such evidence. *Pgs. 82-94.*

- *Selection of the Judge*: Tymoshenko claims that Judge Kireyev's selection as trial judge compromised her right to an independent and impartial trial. She alleges that Judge Kireyev was deliberately selected by President Yanukovych, that he lacked adequate experience and impartiality, and that he improperly ruled on motions for his own disqualification. Tymoshenko's objections fail to raise significant fairness concerns on the record in this case, and the evidentiary record does not support her claim of personal bias. She has not established that Judge Kireyev's experience, tenure, or selection violated Western standards of fairness. *Pgs. 94-106.*

- *Jury Request*: Prior to trial, Tymoshenko requested to be tried in front of a jury. Her request was denied, and she was tried instead by a judge. We do not find that the lack of a jury trial violated due process. Under Western standards, juries are not necessarily essential to a fair trial. They have yet to be used in Ukraine, and Tymoshenko was treated no differently in this regard from other defendants. It should be noted, however, that the implementation of jury trials, as promised in the Ukrainian Constitution, will greatly contribute to the protection of liberty and to the promotion of fairness in Ukraine. Such a reform would go far to improve the quality of justice in Ukraine. *Pgs. 106-09.*

- *Tymoshenko's Courtroom Behavior*: From the very start, Tymoshenko and her defense team challenged the legitimacy of the criminal proceedings against her, alleging that the prosecution was motivated by politics, corruption, and greed. Throughout the trial, the defendant refused to acknowledge the Court's legitimacy and engaged in conduct that was disrespectful to the Court. Such conduct included insulting the Judge and repeatedly accusing him of improper motives;

failing to stand when addressing the Judge (as required under Ukrainian law); harassing adverse witnesses; filing duplicative motions; and making frivolous arguments. These tactics made management of the trial substantially more difficult. *Pgs. 109-12.*

- *Removal from the Courtroom*: Judge Kireyev ordered Tymoshenko removed from the courtroom during the trial on two occasions—July 6 and July 15, 2011. The July 6 removal does not raise serious fairness concerns: Tymoshenko was repeatedly warned that her actions were disruptive and violated the Criminal Procedure Code; no witnesses testified in her absence; and her defense counsel remained present in her absence. Tymoshenko's July 15 removal is more troubling, because no member of her defense team was present in her absence. However, the only evidence admitted during that period was a document to which an objection could later have been made. Neither she nor her counsel raised any objection to the admission of the document, and it does not appear that she suffered any prejudice as a result of the absence. *Pgs. 109-22.*

- *Detention*: Tymoshenko claims that the Court's decision to incarcerate her in a detention facility—beginning on August 5 and continuing through her sentencing—was an open-ended detention unjustified by the facts. Tymoshenko's courtroom behavior would likely have merited a summary contempt finding under Western standards. The Court's separate suggestion that she presented a flight risk is problematic, however, on the record of this case. Taking steps to maintain order in the Courtroom is justifiable. Using detention to achieve that objective, as the Court did in this case, is an accepted but rarely used practice in Western courts. Under Western standards, we find that the decision to detain Tymoshenko for the entire balance of her trial and after the trial had concluded—until sentencing—without adequate justification or review raises concerns about whether she was inappropriately deprived of her liberty prior to her conviction. *Pgs. 122-43.*

- *Representation by Counsel*: Tymoshenko argues that the Court violated her right to adequate representation by examining witnesses in the absence of defense counsel and by failing to adjourn the proceedings to allow her to acquire new legal representation. Ukrainian law, as well as Western legal standards, requires that a defendant who wishes to be represented by counsel during trial must be able to exercise that right. Under Western standards, the continued examination of witnesses without representation by counsel would almost certainly be viewed as a violation of the right to assistance of counsel. *Pgs. 143-61.*

- *Presentation of Defense*: During the investigation stage of the proceeding, Tymoshenko identified a large number of witnesses that she asked to be interviewed. Her request was found to be untimely, and the Chief Investigator denied her request. During the trial, she identified other witnesses and asked that they be permitted to testify. Judge Kireyev refused to permit all but two of these witnesses to testify. Tymoshenko argues that Judge Kireyev's refusal undermined her ability to present her defense. Under Western standards of fairness, we believe that the Court's decision not to call certain defense witnesses compromised Tymoshenko's ability to present a defense. *Pgs. 161-75.*

- *Selective Prosecution*: Tymoshenko has alleged that her prosecution was a politically motivated reprisal undertaken in order to silence a political opponent of the ruling regime. The prosecution of a former head of government, unsuccessful presidential candidate, and leader of the opposition merits close scrutiny in all respects. In this report, we do not opine about whether the prosecution was politically motivated or driven by an improper political objective—*i.e.*, to remove her from political life in Ukraine in the future. Instead, based on the record of the case and established precedent, we do address the narrow doctrine of "selective prosecution." Based on our review of the record, we do not believe that Tymoshenko has provided specific evidence of political motivation that would be sufficient to overturn her conviction under American standards. *Pgs. 175-84.*

- *Adequacy of Charges under Ukrainian Law*: The parties dispute whether the facts found by the Court establish Tymoshenko's guilt regarding the offense as a matter of Ukrainian law. This issue of Ukrainian law—the requirements necessary to satisfy the elements of the statutory offense—is beyond the scope of our assignment and beyond our expertise.

Introduction

The Project

Attorneys from the law firm of Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden") have been hired by the Ministry of Justice of the Government of Ukraine ("the Ministry of Justice") to inquire into the evidence and the procedures used to prosecute former Prime Minister Yulia Tymoshenko. The stated goal was to evaluate all aspects of the process—the investigation, the charging decision, the nature of the evidence supporting the prosecution's case, the conduct of the trial by the court, the behavior of the parties and their counsel in the court, the court's opinion convicting Tymoshenko, and the sentencing—and to write a report addressing various questions that have arisen regarding its fairness. In this report, Skadden does not express an opinion as to Tymoshenko's guilt or innocence. Skadden does present and discuss the evidence as to her alleged wrongdoing and comments on the response of the defense. The report addresses the question whether, based on Western standards of criminal justice, she was treated fairly in accordance with the rule of law. We have identified what we believe to be the key legal and factual issues in the case, and we have addressed questions that might be raised as to the overall fairness of the process.

In writing the report, Skadden has consulted materials provided to us by the Office of the Prosecutor General of Ukraine ("OPG"), by Tymoshenko's defense team, and by various other persons unaffiliated with either the prosecution or the defense. We also have interviewed members of each of these groups and have consulted publicly available sources, including contemporaneous news reports. Many of these documents were translated, and many of the interviews were conducted with the assistance of a translator. A list of individuals interviewed by Skadden appears in the Appendix. The

Appendix also contains a list of key individuals and a list of key entities relevant to this report. The English version of this report is the authoritative version and the only version that has been approved by Skadden.

From the beginning, Skadden made clear that it would be willing to undertake this task only if the Ministry of Justice agreed to provide adequate access to sources of information and individuals with first-hand knowledge of the case as a basis for writing the report. The Ministry of Justice agreed and has complied in good faith with this promise. Skadden also made clear that its work product would reflect its professional opinion, rendered with total independence. At no time has any member of the Ministry of Justice attempted to exert undue influence on the Skadden team. By the same token, Tymoshenko and her counsel also made themselves available to us and provided access to materials and witnesses reflecting their perspective. We are grateful to both sides for their cooperation.

Procedural Summary

Yulia Tymoshenko served as Prime Minister of Ukraine from January to September 2005 and again between December 2007 and March 2010. She was a candidate in the 2010 Ukrainian presidential election, losing in the final round of voting to current President Viktor Yanukovych on February 14, 2010.

The OPG formally "initiated" a criminal investigation of the former Prime Minister on April 11, 2011. On April 13, 2011, she was granted release on her own recognizance. She was indicted under Ukrainian Criminal Code Article 365(3) (acts in "[e]xcess of authority or official powers" causing "grave consequences") on April 27 and May 24, and the full indictment was read into the record at the completion of the

preliminary stage of the trial on July 15, 2011. The charges concerned Tymoshenko's role as Prime Minister in negotiating and concluding the January 19, 2009, gas contracts between NAK Naftogaz ("Naftogaz"), Ukraine's state-owned gas company, and OAO Gazprom ("Gazprom"), its Russian counterpart.

On June 17, 2011, the charges against Tymoshenko were referred to the Pechersky District Court of Kyiv, and the case was assigned to Judge Rodion Kireyev. The trial began on June 24. Six weeks into the trial—on August 5—the Court revoked Tymoshenko's conditions of release and ordered her to be taken into custody at a detention facility, where she remained for the rest of the trial. The evidentiary stage of the trial ended on September 7, and oral arguments concluded on September 30. In total, the trial comprised 42 court sessions.

On October 11, 2011, Judge Kireyev announced a verdict finding Tymoshenko guilty of violating Article 365(3). He sentenced her to seven years of incarceration and disqualified her from holding public office for an additional three years. Judge Kireyev also granted a civil claim against Tymoshenko by Naftogaz, imposing liability against Tymoshenko in the amount of 1,516,365,234.94 hryvnas (at the time, approximately $194,625,386.70).

Tymoshenko appealed her conviction to the Ukrainian Court of Appeals, Ukraine's intermediate appellate court, which dismissed her appeal on December 23, 2011. She subsequently appealed her conviction to the Court of Cassation, Ukraine's highest court, which upheld the decisions of the district court and the Court of Appeals on August 29, 2012. She also has filed an application with the European Court for Human Rights, which remains pending.

Overview

This report analyzes the prosecution, trial, and conviction of Yulia Tymoshenko through the prism of Western standards of due process and the rule of law. Part I provides background on the history of the conflict between Russia and Ukraine over the sale of natural gas by Russia to Ukraine and the transportation of that gas to Europe through Ukrainian pipelines. Part II describes the facts and circumstances that form the basis for Tymoshenko's prosecution, focusing in particular on the role that she played in the negotiations over gas pricing that took place in 2008 and 2009. Part III identifies key elements of the dispute, including the witness testimony and documents introduced at trial, and lays out the legal and factual theories advanced by both sides. Part IV addresses the legal proceedings against Tymoshenko and discusses her challenges to the fairness of the process as viewed from a Western perspective.

I. Background on the Russia-Ukraine Gas Conflict

Ukraine is the world's single largest importer of Russian gas.[1] From 2003-2008, Ukraine imported 49-57 billion cubic meters ("bcm") per year, compared to 19-21 bcm/year of its own production.[2] The country also serves as the primary conduit of Russian gas exports to Europe—responsible for 80 percent of transit volumes of Russian gas to Europe.[3] The relationship between Ukraine and Russia grew out of Ukraine's gas-centered industrial development, with Ukraine deeply dependent on supplies of Siberian gas and Russia at least equally dependent on Ukrainian gas delivery to Europe.[4] After the dissolution of the Soviet Union, Ukraine inherited all of the gas pipelines within its borders and, along with Belarus, became a vitally important transit country for delivery of Russian gas to Europe.[5] Approximately one-fifth of Europe's supply of natural gas comes from Russia by way of Ukraine.[6]

---

1 Simon Pirani, Jonathan Stern, & Katja Yafimava, *The Russo-Ukrainian Gas Dispute of January 2009: A Comprehensive Assessment*, Oxford Inst. for Energy Studies, at 5 (Feb. 2009).

2 *Id.* at 6.

3 *Id.*; Ohla Zadorozhna, *How Much do the Neighbors Pay? Economic Costs of International Gas Disputes*, Working Paper No. 48, IEFE Center for Research on Energy and Environmental Economics & Policy at Bocconi Univ., at 1 (Mar. 2012); Simon Pirani, *How Post-Soviet Transition & Economic Crises Shaped the Russo-Ukrainian "Gas Wars"*, PEEER Seminar Working Paper, Governing Energy in Europe & Russia, Oxford Inst. for Energy Studies, at 6 (Sept. 2010); *Russia Opens Tap, but Gas Dispute Continues*, NPR.org, Jan. 13, 2009, http://www.npr.org/templates/story/story.php?storyId=99285209.

4 Simon Pirani, Jonathan Stern, & Katja Yafimava, *The Russo-Ukrainian Gas Dispute of January 2009: A Comprehensive Assessment*, Oxford Inst. for Energy Studies, at 5 (Feb. 2009).

5 Ohla Zadorozhna, *How Much do the Neighbors Pay? Economic Costs of International Gas Disputes*, Working Paper No. 48, IEFE Center for Research on Energy and Environmental Economics & Policy at Bocconi Univ., at 4 (Mar. 2012); Simon Pirani, *How Post-Soviet Transition & Economic Crises Shaped the Russo-Ukrainian "Gas Wars"*, PEEER Seminar Working Paper, Governing Energy in Europe & Russia, Oxford Inst. for Energy Studies, at 6 (Sept. 2010).

6 *Medvedev calls for gas summit; European Union urges lawsuits*, KYIV POST, Jan. 14, 2009, http://www.kyivpost.com/news/world/detail/33306/.

During the 1990s—after Ukraine gained its independence in 1991—the two countries engaged in ongoing disputes about gas prices, transit fees, payment terms, and debt. The "gas wars," as they came to be called, resulted in Russia halting the Ukrainian gas supply multiple times during the decade.[7] Through the 1990s, the gas trade between the two countries was based on a relationship between gas purchases and gas transit, with Ukraine enjoying below-market prices for Russian gas and Russia receiving below-market European prices for transit services and underground gas storage.[8] Even with below-market prices for gas, however, Ukraine still accumulated significant debt to Russia. In 1998, Ukraine's alleged debt to Russia reached a high of $2.8 billion.[9] In 2001, Russia and Ukraine resolved the debt issue by entering into an agreement, further amended in 2004, which required Ukraine to facilitate the transit of approximately 19.2 bcm of Russian gas in exchange for in-kind payments of 5 bcm of gas each year from 2005 to 2009.[10]

---

[7] Simon Pirani, Jonathan Stern, & Katja Yafimava, *The Russo-Ukrainian Gas Dispute of January 2009: A Comprehensive Assessment*, Oxford Inst. for Energy Studies, at 5 (Feb. 2009); Ohla Zadorozhna, *How Much do the Neighbors Pay? Economic Costs of International Gas Disputes*, Working Paper No. 48, IEFE Center for Research on Energy and Environmental Economics & Policy at Bocconi Univ., at 4 (Mar. 2012); Simon Pirani, *How Post-Soviet Transition & Economic Crises Shaped the Russo-Ukrainian "Gas Wars"*, PEEER Seminar Working Paper, Governing Energy in Europe & Russia, Oxford Inst. for Energy Studies, at 2-5 (Sept. 2010); Jonathan Stern, *The Gazprom-Ukraine Gas Dispute of January/February 2006 and Energy Security*, Presentation at International Energy Agency, Oxford Inst. for Energy Studies, at 5 (June 12, 2006).

[8] Ohla Zadorozhna, *How Much do the Neighbors Pay? Economic Costs of International Gas Disputes*, Working Paper No. 48, IEFE Center for Research on Energy and Environmental Economics & Policy at Bocconi Univ., at 4 (Mar. 2012).

[9] *Id.* When used in this report, "$" refers to United States dollars.

[10] *Id.* at 5; Simon Pirani, *How Post-Soviet Transition & Economic Crises Shaped the Russo-Ukrainian "Gas Wars"*, PEEER Seminar Working Paper, Governing Energy in Europe & Russia, Oxford Inst. for Energy Studies, at 10 (Sept. 2010).

At the beginning of 2005, Ukraine sought to renegotiate the agreement in order to obtain more gas in payment for providing transit services to Europe.[11] Gazprom, Russia's state-owned gas monopoly, responded by demanding Ukraine pay a higher price.[12] On January 1, 2006, with no agreement in place and the coldest part of winter fast approaching, Gazprom threatened to halt natural gas supply to Ukraine unless the parties could settle their differences.[13] Russia acted on its threat, reducing pressure in the pipeline system for two days, causing delays of natural gas exports to Europe.[14] Countries throughout Europe were affected, with Bulgaria and Romania forced to stop production at their industrial plants, and Slovakia declaring a state of emergency.[15]

---

[11] Ohla Zadorozhna, *How Much do the Neighbors Pay? Economic Costs of International Gas Disputes*, Working Paper No. 48, IEFE Center for Research on Energy and Environmental Economics & Policy at Bocconi Univ., at 5 (Mar. 2012); Jonathan Stern, *The Gazprom-Ukraine Gas Dispute of January/February 2006 and Energy Security*, Presentation at International Energy Agency, Oxford Inst. for Energy Studies, at 6 (June 12, 2006).

[12] Gazprom accounts for five-sixths of Russian gas production and all exports. It is Russia's largest company, with a 50.1 percent state holding, and has its senior management posts held by Prime Minister Putin-appointees. Simon Pirani, *How Post-Soviet Transition & Economic Crises Shaped the Russo-Ukrainian "Gas Wars"*, PEEER Seminar Working Paper, Governing Energy in Europe & Russia, Oxford Inst. for Energy Studies, at 8 (Sept. 2010); Ohla Zadorozhna, *How Much do the Neighbors Pay? Economic Costs of International Gas Disputes*, Working Paper No. 48, IEFE Center for Research on Energy and Environmental Economics & Policy at Bocconi Univ., at 5 (Mar. 2012).

[13] Ohla Zadorozhna, *How Much do the Neighbors Pay? Economic Costs of International Gas Disputes*, Working Paper No. 48, IEFE Center for Research on Energy and Environmental Economics & Policy at Bocconi Univ., at 5 (Mar. 2012); Simon Pirani, *How Post-Soviet Transition & Economic Crises Shaped the Russo-Ukrainian "Gas Wars"*, PEEER Seminar Working Paper, Governing Energy in Europe & Russia, Oxford Inst. for Energy Studies, at 10 (Sept. 2010).

[14] Simon Pirani, *How Post-Soviet Transition & Economic Crises Shaped the Russo-Ukrainian "Gas Wars"*, PEEER Seminar Working Paper, Governing Energy in Europe & Russia, Oxford Inst. for Energy Studies, at 11 (Sept. 2010); Peter Finn, *Russia Cuts Off Gas to Ukraine in Controversy Over Pricing*, THE WASHINGTON POST, Jan. 2, 2006, http://www.washingtonpost.com/wp-dyn/content/article/2006/01/01/AR2006010100401_pf.html; Simon Pirani, Jonathan Stern & Katja Yafimava, *The Russo-Ukrainian Gas Dispute of January 2009: A Comprehensive Assessment*, Oxford Inst. for Energy Studies, at 8 (Feb. 2009); Jonathan Stern, *The Gazprom-Ukraine Gas Dispute of January/February 2006 and Energy Security*, Presentation at International Energy Agency, Oxford Inst. for Energy Studies, at 7 (June 12, 2006).

[15] Ohla Zadorozhna, *How Much do the Neighbors Pay? Economic Costs of International Gas Disputes*, Working Paper No. 48, IEFE Center for Research on Energy and Environmental Economics & Policy at Bocconi Univ., at 8 (Mar. 2012); Jonathan Stern, *The Gazprom-Ukraine Gas Dispute of*

International pressure from European Union member states led to a new Russian-Ukrainian gas agreement on January 4, 2006.[16] The parties to the agreement were Gazprom (Russia's state-owned gas company), Naftogaz (Ukraine's state-owned gas company), and RosUkrEnergo Company (a private energy company substantially owned by Gazprom that served as an intermediary between the two state-owned entities). The agreement set the price of natural gas for the following six months at $95 per thousand cubic meters ("kcm") of natural gas.[17] It also established RosUkrEnergo as Ukraine's "supplier" of Russian gas, such that "[f]rom 01 January 2006 Gazprom supplies no natural gas to Ukraine, and [Naftogaz] exports no natural gas delivered from Russia from Ukraine."[18]

For 2008, Ukraine paid Russia approximately $179.50/kcm for gas. For the right to transport Russian gas across Ukraine to Europe, Ukraine received $1.7/kcm from Russia for each 100 kilometers of transit.[19]

January/February 2006 and Energy Security, Presentation at International Energy Agency, Oxford Inst. for Energy Studies, at 7 (June 12, 2006).

[16] Ohla Zadorozhna, *How Much do the Neighbors Pay? Economic Costs of International Gas Disputes*, Working Paper No. 48, IEFE Center for Research on Energy and Environmental Economics & Policy at Bocconi Univ., at 6 (Mar. 2012); Simon Pirani, *How Post-Soviet Transition & Economic Crises Shaped the Russo-Ukrainian "Gas Wars"*, PEEER Seminar Working Paper, Governing Energy in Europe & Russia, Oxford Inst. for Energy Studies, at 11 (Sept. 2010); Simon Pirani, Jonathan Stern & Katja Yafimava, *The Russo-Ukrainian Gas Dispute of January 2009: A Comprehensive Assessment*, Oxford Inst. for Energy Studies, at 8 (Feb. 2009); Jonathan Stern, *The Gazprom-Ukraine Gas Dispute of January/February 2006 and Energy Security*, Presentation at International Energy Agency, Oxford Inst. for Energy Studies, at 8 (June 12, 2006).

[17] Agreement on Regulation of Relations in Gas Sphere (Jan. 4, 2006).

[18] *Id.*

[19] Elsewhere in this Report, where transit prices are reported as a dollar value, the figure represents the price of transporting 1,000 cubic meters of gas over a distance of 100 kilometers.

II. The 2008-2009 Gas Dispute

Tymoshenko was convicted for her role in concluding a new contract in January 2009 between Naftogaz, the Ukrainian natural gas company, and Gazprom, its Russian counterpart. She was Prime Minister at the time of the new contract. The core of the criminal charges is that she abused her power and exceeded her official authority by directing the head of Naftogaz to sign the January 19, 2011, agreement without the approval of Ukraine's Cabinet of Ministers, even though she knew such approval was legally required. A key component of the alleged wrongdoing includes evidence suggesting that Tymoshenko engaged in a pattern of deception and intimidation that resulted in the head of Naftogaz signing the agreement against his own better judgment. The prosecution claimed that Tymoshenko sought prior approval from the Cabinet of Ministers, that the approval was not forthcoming, but that she nonetheless created a document that appeared to be a governmental directive and gave it to the head of Naftogaz in Moscow, giving him the impression that the Cabinet of Ministers had in fact approved the agreement—which she knew to be untrue.

The following sections describe the events leading up to, including, and immediately following the January 2009 negotiations. The following facts are undisputed:

- In October 2008, the Prime Ministers of Russia and Ukraine (Vladimir Putin and Tymoshenko, respectively) signed a Memorandum of Understanding in which they endorsed their support for, among other things, transitioning to a market-based approach to natural gas pricing and eliminating intermediaries and requiring Naftogaz and Gazprom to negotiate directly with one another.

- After substantial negotiations, the parties failed to reach agreement on December 31.

- In early January 2009, Russia reduced and eventually stopped altogether the flow of Russian gas into Ukraine, threatening Ukraine's major source of supply and its ability to transport gas to Europe.

- On January 17, Tymoshenko went to Moscow and, with her Russian counterpart, Prime Minister Vladimir Putin, announced that an agreement had been reached.

- On January 19, the Cabinet of Ministers met in Kyiv to discuss the terms of the agreement that the two Prime Ministers had discussed and agreed to. No vote on the issue was taken at the meeting.

- Also on January 19, the heads of Gazprom and Naftogaz met in Moscow and, in a highly publicized press conference in the Kremlin attended by the two Prime Ministers, signed an agreement.

- On January 21, the Cabinet of Ministers met to discuss the agreement. Fourteen Members voted to approve the results of the negotiation process. There were eight abstentions and one vote against the agreement.

As to many other related facts, there are radically differing accounts and interpretations. Where possible, our report identifies these conflicts, presents the relevant evidence, and comments on that evidence, but it does not attempt to resolve these factual disputes.

In considering these facts, we provide a chronological overview that deals with the following topics: (A) the government actions and company negotiations in 2008 that seemed to be leading to an agreement; (B) the ultimate breakdown of negotiations on December 31, 2008; (C) the Russian shutdown of gas to Ukraine beginning January 1, 2009; (D) Tymoshenko's January 17, 2009, trip to Moscow and the subsequent Tymoshenko-Putin announcement of an agreement; (E) Tymoshenko's discussion with President Viktor Yushchenko on January 19, 2009; (F) the Cabinet of Ministers meeting on January 19, 2009; (G) the discussions between Tymoshenko and Dubyna in Moscow on January 19, 2009; (H) the Cabinet of Ministers meeting on January 21, 2009; (I) the contracts; (J) Tymoshenko's investigation and indictment; and (K) Tymoshenko's conviction and appeals. Throughout this overview, it should be remembered that the

charges against Tymoshenko rest on a claim that she abused her power by directing the signing of the agreement without approval of the Cabinet of Ministers, and that she was dishonest and deceptive in doing so. This summary is drawn from trial testimony wherever possible, but it also is supplemented by information gathered in interviews by Skadden and additional materials.

A. Negotiations in 2008

Seeking a solution to their recurring gas-pricing disputes, representatives from Russia and Ukraine began negotiations in 2008 over a long-term framework for using the market, rather than political negotiations, to set prices.[20] The Ukrainians saw such a framework as being a counter to the Russian tactic of delaying negotiations on a new contract until shortly before the prior contract was set to expire.[21]

In February 2008, Ukrainian President Viktor Yushchenko and Vladimir Putin, then Russia's President, reached a public agreement concerning the sale of gas between the two countries. The agreement provided that the private company RosUkrEnergo would be eliminated as an intermediary, enabling direct natural gas sales between Gazprom and Naftogaz.[22] The agreement also set out terms installing Naftogaz as the importer of central Asian gas, and provided that a wholesaler, wholly owned by Gazprom,

---

[20] Igor Didenko, an official of Ukraine's state-owned gas company Naftogaz, testified: "Starting from the middle of the first quarter of 2008, I was regularly taking part in the line of duty in negotiations, consultations and discussions with the representatives of Gazprom JSC regarding switching to direct contractual relations between Naftogaz and Gazprom JSC. . . . In 2008 we managed to switch to the status of the natural gas importer." Trial Transcript at 20 (July, 29 2011). Likewise, Oleh Dubyna, another Naftogaz official, confirmed that "[t]hroughout 2008 we were busy with trips, meetings, and negotiations." *Id.* at 11; Shlapak Skadden Interview at 4 (May 15, 2012).

[21] Shlapak Skadden Interview at 4 (May 15, 2012); Yushchenko Skadden Interview at 7 (Apr. 19, 2012).

[22] Simon Pirani, Jonathan Stern, & Katja Yafimava, *The Russo-Ukrainian Gas Dispute of January 2009: A Comprehensive Assessment*, Oxford Inst. for Energy Studies, at 12 (Feb. 2009).

would be licensed to work on the Ukrainian market.[23] The agreement was affirmed in a presidential decree issued by President Yushchenko on February 26, 2008, which stated that Naftogaz and Gazprom would "move to direct transparent gas supply without intermediaries."[24]

That following October, the Prime Ministers of Russia and Ukraine signed a Memorandum of Understanding, a major plank of which was the endorsement of a market-based approach to pricing.[25] According to the OPG, this Memorandum also provided for a correlation between the price of natural gas and the price of transit—should the gas price increase or decrease, the transit price would increase or decrease proportionally.[26] Meanwhile, the state-owned companies continued to negotiate a new contract to replace the one that was set to expire at the end of 2008. In her pretrial testimony, Tymoshenko claimed that she and Putin reached agreement on a price of $235/kcm.[27]

On approximately December 20, a Gazprom representative held a press conference announcing that Ukraine was in arrears on their gas payments, owing approximately $1.4 billion. Yushchenko told Skadden that, when he confronted Naftogaz about the debt, he was told that "they had no money."[28] Within a few days, Yushchenko

---

23 *Id.*

24 Decree of the President of Ukraine No. 165/2008 at 2 (Feb. 26, 2008).

25 Yushchenko testified: "On October 2, 2008 Russian and Ukrainian Prime Ministers meet. That meeting results in a joint memorandum, which includes several basic points that fully reflect the above said presidential agreements." Trial Transcript at 4 (Aug. 17, 2011); Yushchenko Skadden Interview at 6 (Apr. 19, 2012).

26 Act of Indictment at 63.

27 Tymoshenko Pretrial Interview at 4-5 (May 24, 2011).

28 Yushchenko Skadden Interview at 7 (Apr. 19, 2012).

obtained financing from Ukrainian institutions sufficient to make up the shortfall and pay the nation's gas bill through the end of December. By that time, however, "Brussels and Europe were already worried about Ukraine and [its] ability to honor gas delivery commitments to the West."[29]

B. December 31, 2008: Discussions Break Down

In late December, several meetings were conducted between Oleh Dubyna, the head of Naftogaz, and Alexei Miller, his Russian counterpart at Gazprom.[30] Yushchenko testified at trial that Dubyna informed him that Miller had agreed to a purchase price of $250/kcm, but that Dubyna might be able to negotiate down to $235/kcm.[31] This represented a significant increase from the prior year's price of $179.50/kcm.[32] At the same time, the price was considerably lower than the price paid by some neighboring countries, such as Poland, which paid an average of $510/kcm for Russian gas in the fourth quarter of 2008.[33] Dubyna also reported that the transit price—the price Russia

---

[29] *Id.*

[30] Yushchenko testified: "On December 26 [the Ukrainian and Russian negotiating teams] arrive to Moscow and formally the negotiations keep going on every hour. . . . Late at night on December 27, 2008 Dubyna calls [Sokolovsky] and states that they got through the technical phase of the negotiations and he needs a meeting with the President on the morning of the 28th." Trial Transcript at 4, 5 (Aug. 17, 2011); Yushchenko Skadden Interview at 7 (Apr. 19, 2012); Shlapak Skadden Interview at 5-6 (May 15, 2012).

[31] Yushchenko testified: "[Dubyna] reports that the price, which was mostly discussed during the negotiations, is $250 for 1000 m3 . . . he believed that the price might be brought down from 250 to 235, but this is the price that was not agreed with Putin." Trial Transcript at 5 (Aug. 17, 2011); Yushchenko Skadden Interview at 7-8 (Apr. 19, 2012); Yushchenko Skadden Interview at 3 (May 30, 2012).

[32] *Medvedev calls for gas Summit; European Union urges lawsuits*, KYIV POST, Jan. 14, 2009, http://www.kyivpost.com/news/world/detail/33306/.

[33] Letter from Valdemar Pavlyak, Vice Prime Minister, Minister of Economy, Poland, to Grigory Nemirya, Vice Prime Minister of European and International Integration, Cabinet of Ministers, Ukraine (Dec. 30, 2008).

paid to Ukraine for the cross-country transport of gas to Europe—might rise from $1.7 to $1.8.

Yushchenko testified that while these figures were acceptable, he instructed Dubyna "if you feel that our negotiations on the gas price can be optimized and we can get down to 235, go ahead, try to get it. Same thing with the transit tariff."[34] According to Yushchenko, shortly after his meeting with Dubyna, Putin called Tymoshenko directly and insisted that the price should be $250, which Tymoshenko refused.[35] As a result, according to Yushchenko, Putin instructed Miller to halt negotiations.[36] Further attempts to reach a deal with Gazprom were unsuccessful.[37]

Dubyna provided a different account of the breakdown in negotiations. He testified at trial that on December 31, he and Miller were close to reaching agreement on a deal at $235/kcm and $1.8. But Yushchenko told him not to sign the agreement; after Yushchenko had spoken to Russia's President, negotiations were cut off.[38] Dubyna

---

[34] Trial Transcript at 5 (Aug. 17, 2011). Yushchenko told Skadden that he instructed Dubyna to obtain the best possible prices but also indicated that the $250 and $1.7 figures were acceptable. Yushchenko Skadden Interview at 7 (Apr. 19, 2012); Yushchenko Skadden Interview at 3 (May 30, 2012).

[35] Yushchenko described the exchange: "On the 28th, before lunch, Miller reports to the Russian Prime Minister on the outcome of the negotiations with Ukraine. On the same day the prime ministers of Russia and Ukraine speak on the phone. I believe . . . [f]or the first and only time the Russian side officially offers to the Ukrainian side the price of 250. . . . After lunch Dubyna goes to Miller's office, and Miller says: 'The Ukrainian Prime Minister declined our offer of $250." Trial Transcript at 5, 6 (Aug. 17, 2011). In a post-trial interview with Skadden, Dubyna disputes whether the December 31 agreement was not finalized because Tymoshenko opposed it: "That never happened. Tymoshenko was already boarding the plane to Moscow on December 31 to sign this agreement." Dubyna Skadden Interview at 3 (July 18, 2012).

[36] Yushchenko testified that Dubyna called him and said: "I was instructed by the Prime Minister to arrange her emergency working visit to the Russian Prime Minister and the Gazprom management. . . . The Russian Prime Minister's answer was that he does not wish to meet with the Ukrainian Prime Minister." Trial Transcript at 6 (Aug. 17, 2011); Yushchenko Skadden Interview at 8-9 (Apr. 19, 2012); Yushchenko Skadden Interview at 3 (May 30, 2012). *See also* Shlapak Skadden Interview at 7 (May 15, 2012).

[37] Trial Transcript at 6 (Aug. 17, 2011).

[38] Trial Transcript at 11 (July 29, 2011).

testified that the intervention of RosUkrEnergo had affected the negotiations, explaining that "[w]hen it was announced that we were unhappy with that price, Miller told me that there was a letter from RosUkrEnergo that they would buy the entire volume of gas at $285. . . . I met the executives of RosUkrEnergo in the Office of the President, three times in Viktor A. Yushchenko office and twice in Baloga's office."[39] In Dubyna's opinion, "I believe that if RosUkrEnergo had not offered the price of $285 to upset negotiations, the contract would have been signed."[40] Dubyna flew back to Kyiv without an agreement.[41]

Also on December 31, Yushchenko and Tymoshenko wrote a joint statement explaining the breakdown in negotiations. Their statement said that Ukraine stood ready to fulfill its obligations to its European partners and to continue transporting Russian gas to Europe. It also indicated that Ukraine's gas reserves and its domestic production were sufficient to supply the needs of the Ukrainian people. The statement was intended to show that the President and Prime Minister were united in their efforts to resolve the crisis.[42] Yushchenko and Tymoshenko released their statement late that evening or early the next morning.[43]

---

[39] Trial Transcript at 15 (July 29, 2011). At trial, Dubyna explained the cause of the breakdown of negotiations as follows: "I would have signed the agreement on December 31, 2008 with the following terms: gas price - $235, transit price - $1.8. I would have signed it for one year . . . . When it was announced that we were unhappy with that price, Miller told me that there was a letter from RosUkrEnergo that they would buy the entire volume of gas at $285 . . . ." *Id.* at 15. Dubyna told Skadden that, "[a]t the last minute," Putin instructed Miller that the deal was unacceptable. Dubyna Skadden Interview at 2-3 (Apr. 18, 2012).

[40] Trial Transcript at 15 (July 29, 2011).

[41] Didenko testified: "Delegation of Naftogaz left the building of Gazprom JSC around 22:30 Moscow time on December 31, 2008." Trial Transcript at 21 (July 29, 2011); Dubyna Skadden Interview at 3 (Apr. 18, 2012); Yushchenko Skadden Interview at 9 (Apr. 19, 2012).

[42] Yushchenko explained to Tymoshenko: "[W]e need to make a joint statement and show the nation and the world what happened and why the negotiations are off." Trial Transcript at 6 (Aug. 17, 2011);

C. January 1-17, 2009: Russian Shutdown of Gas to Ukraine

On January 1, 2009, Russia diminished the flow of gas into Ukraine, and within a week it was shut off completely.[44] This shutdown coincided with a brutally cold winter, with temperatures in parts of the country reaching negative 27 degrees Celsius.[45] Ukraine began drawing on its gas reserves, transporting gas from storage facilities in the western part of the country. This sufficed to prevent residential consumers from freezing and enabled businesses to continue operating, albeit only minimally.[46]

Estimates vary as to how long Ukraine could have continued to function while drawing on its reserves. Dubyna indicated in a pretrial interview that "the gas in the reservoirs would have lasted until the end of February 2009."[47] Mykola Goncharuk, the former head of Naftogaz's Department of Oil and Gas Resources, stated that Ukraine's

---

Yushchenko Skadden Interview at 8 (Apr. 19, 2012); Yushchenko Skadden Interview at 3 (May 30, 2012); Shlapak Interview at 6 (May 15, 2012).

43 Yushchenko testified: "On the 31st I contact the Ukrainian Prime Minister. . . . Starting from about 4:00 p.m. we keep working on the joint statement. Around 11:30 p.m. the statement was already agreed and signed. We published it on the New Year's Eve." Trial Transcript at 6 (Aug. 17, 2011); Shlapak Skadden Interview at 6 (May 15, 2012).

44 Accounts differ as to the precise date on which Russia completely stopped the flow of gas to Ukraine. *See*, *e.g.*, Trial Transcript at 11 (July 29, 2011) (O. Dubyna) ("On January 1, 2009, gas shipments for Ukraine were suspended. . . . On January 4, 2009, Russia unilaterally cut off the gas flow."); Dubyna Skadden Interview at 3 (Apr. 18, 2012) ("On January 4th, Russia . . . shut off the flow of gas completely."); Trial Transcript at 7-8 (Aug. 17, 2011) (V. Yushchenko) ("On the 4th we start getting less gas for transit, and in the night between the 6th and 7th the supplies to Europe are cut off."); Honcharuk Pretrial Interview at 1 (Apr. 22, 2011) ("[O]n 7 January 2009, supply was completely turned off."); Frolov Pretrial Interview at 1 (Feb. 16, 2011) ("[O]n 7 January, they shut down supply altogether.").

45 Dubyna Skadden Interview at 3 (Apr. 18, 2012).

46 *See id.*; *see also* Shlapak Skadden Interview at 6-8 (May 15, 2012); *Will Saturday's talks in Moscow end stalemate over gas supplies?*, KYIV POST, Jan. 15, 2009, http://www.kyivpost.com/news/world/detail/33385/ ("Output in Ukraine's key steel sector fell almost 43 percent in December compared with December 2007, official data showed.").

47 Dubyna Pretrial Interview at 2 (Apr. 14, 2011).

gas reserves would have run out by approximately January 24-29.[48] Vadim Frolov, head engineer at a Naftogaz subsidiary, estimated that Ukraine's reserves could have lasted for approximately forty days, "assuming Ukraine kept operating at reduced capacity."[49] The technical difficulty of relying on reservoir gas, which had never before been attempted, added to the uncertainty.[50]

Other European nations, whose own gas supply was dependent on the transport of Russian gas across Ukraine, expressed alarm at the standoff.[51] Thousands of European businesses were forced to shut down or cut production in light of reduced supplies.[52] The European Union threatened to sue both sides.[53]

---

48 Honcharuk Pretrial Interview at 2-3 (May 18, 2011).

49 Frolov Pretrial Interview at 2 (Feb. 16, 2011).

50 Frolov Skadden Interview at 9 (May 16, 2012) ("Another reason we were unable to provide a clear forecast was because when Gazprom turned off the taps, we had to take gas from our western reservoirs and move them east. [The system] was not designed for such a direction, i.e. west to east. But, thanks to our engineers, we identified certain pumping stations that could reverse the direction of gas flow. We had limited numbers of these stations. We didn't have backup equipment at these stations. And, this equipment was working in an abnormal mode and we could expect that they could fail at anytime. If one pumping station failed, 30% of Ukrainian gas consumers would be without gas. If two pumping stations failed, 45-50% would be without gas. We reinforced the personnel at these stations."); Turchinov Skadden Interview at 7 (June 13, 2012) ("A working group was created in the government that, for the first time in Ukrainian history, engineered a plan to run [the system] in reverse. Our main storages are located in the West of the country but our main consumers are in the East. For the first time, gas went from West to East rather than East to West. The pressure in [the system] was lowering and there could have been an emergency situation at any moment.").

51 *E.g.*, *European gas supplies disrupted*, BBC NEWS, Jan. 6, 2009, http://news.bbc.co.uk/2/hi/europe/7812860.stm ("Amid cold weather across the continent, the European Commission said the supply cut was 'completely unacceptable.'"); *Worried EU states to fly to Moscow over gas row*, REUTERS, Jan. 13, 2009, http://www.reuters.com/article/2009/01/13/us-russia-ukraine-gas-idUSTRE5062Q520090113?pageNumber=1&virtualBrandChannel=0&sp=true.

52 *Medvedev calls for gas summit; European Union urges lawsuits*, KYIV POST, Jan. 14, 2009, http://www.kyivpost.com/news/world/detail/33306/print.

53 *Id.*

Yushchenko sought to enlist the support of other nations, and a "tripartite" summit—including representatives from Ukraine, Russia, and Europe—was planned.[54] Meanwhile, Dubyna and Miller continued to negotiate. Dubyna testified at trial that during this period, he was aware of prices ranging between $420 and $500.[55] Dubyna told Skadden that he refused these terms and flew back to Kyiv.[56] Russia's representatives continued to insist publicly on a price of $450, which they claimed was the prevailing European rate.[57] On January 15, Tymoshenko told journalists that Ukraine had enough gas in underground storage facilities to last through negotiations with Russia, "enough for us to hold such negotiations calmly and without a fuss."[58]

---

54 Trial Transcript at 6 (Aug. 17, 2011) (V. Yushchenko) ("On the same day, the 14th, we talk several times to the Czech Prime Minister. The idea of these conversations was as follows: 'Mr. Prime Minister, you are now representing the European Union, and the existing continental crisis is basically not the fault of Ukraine. Please help us to have a trilateral conference on this issue and resolve it."); Yushchenko Skadden Interview at 8-9 (Apr. 19, 2012); Yushchenko Skadden Interview at 4 (May 30, 2012); Shlapak Skadden Interview at 9 (May 15, 2012).

55 "On January 17, 2009, when I was in Sochi [I] heard people talk about $500 . . . ." Trial Transcript at 11 (July 29, 2011); *see also id.* at 16 ("The price of $420 was first heard on January 5, 2009. On January 10, 2009 in Sochi I heard the price of $460, and then $500."). In an interview with Skadden, Dubyna stated that on January 10 he was told by Putin that "Mr. Medvedev and Ms. Tymoshenko have agreed on a price of $450." Dubyna Skadden Interview at 3 (Apr. 18, 2012).

56 Dubyna Skadden Interview at 3 (Apr. 18, 2012).

57 *Russia's Plans for Moscow Gas Summit in Disarray*, KYIV POST, Jan. 16, 2009, http://www.kyivpost.com/content/world/russias-plans-for-moscow-gas-summit-in-disarray.html?flavour=mobile (noting "Russia's demand that Ukraine pay $450 per 1,000 cubic meters of gas in 2009").

58 *Tymoshenko: Ukraine has enough gas in underground facilities to calmly negotiate with Gazprom*, KYIV POST, Jan. 15, 2009, http://www.kyivpost.com/news/nation/detail/33363/. Tymoshenko told Skadden that her statement was an attempt "to calm the country down" and that the situation was already very serious at that point. Tymoshenko Skadden Interview at 12 (June 28, 2012). Contrarily, Yushchenko testified at trial that Ukraine had sufficient gas reserves to negotiate with Russia "in peace." Trial Transcript at 11 (Aug. 17, 2011) ("[W]e basically had up to 18 billion cubic meters in stock . . . [t]hat is why I believe that the security we had as of January 2009 was one of the best in recent years.").

During the same period, Yushchenko worked to finalize the details of the tripartite summit, which was to be held somewhere in Europe.[59] Yushchenko testified that he subsequently called Tymoshenko to urge her not to attend a separate summit in Moscow, explaining: "I call [Tymoshenko] at about 1 or 1:30 a.m. and inform her that the negotiations were such and such . . . I tell [her]: 'I must ask you not to go to the summit.'"[60] He says that Tymoshenko agreed and promised solidarity; but shortly thereafter, she received a call from Putin inviting her to Moscow, and she accepted his invitation.[61] On or around January 16, Yushchenko flew to London to meet with the British Prime Minister regarding the tripartite summit.[62]

Tymoshenko and Yushchenko released contrasting statements regarding the crises on their websites: His statement said that the resumption of gas supplies to Europe would be linked to reaching a deal on Ukraine's supply; her statement said that the two issues were not connected.[63] Tymoshenko also stated:

---

59 Yushchenko testified: "On the 14th I go to Poland, where we have negotiations with the main purpose to explain to the Polish side . . . the summary of what happened. . . . On the same day . . . we talk several times to the Czech Prime Minister . . . . [We ask him to] help us to have a trilateral conference on this issue. . . . The Czech Prime Minister, who was a strong partner of Ukraine in general, and also on this issue, asked us to speak to the Prime Minister of the European Union [*sic*]. After that we talked to Mr. Barroso precisely about the necessity to meet and resolve the issue. . . . [W]e found understanding at every level." Trial Transcript at 8 (Aug. 17, 2011).

60 *Id.* at 9.

61 Yushchenko testified: "To be honest, she readily agreed, she said almost immediately: 'But of course . . . I won't go to Moscow.'" *Id.*

62 Yushchenko testified: "I get on the plane and go to the British Prime Minister, who was quite an important person for Ukraine, as he affected the situation in the European Commission and, especially, in the European Union. We have a five-hour meeting with Mr. Brown, where the logic of actions is fully understood and the summary of events is rendered. Besides, they had their own research on this matter. The negotiations end favorably, I get on the plane and go back to Ukraine." *Id.* at 9. Dubyna confirmed this at a post-trial interview with Skadden: "Yushchenko prohibited her from going, but she came anyway. I had an unpleasant conversation with her at that time, because I also didn't want to go, but she told me I had to come." Dubyna Skadden Interview at 4 (July 18, 2012).

63 Yushchenko Skadden Interview at 9 (Apr. 19, 2012); Yushchenko Interview at 4-6 (May 30, 2012). According to Yushchenko, Tymoshenko held a press conference on January 16 stating that Ukraine

> In order to be effective and responsible, there will be just one government line in our gas diplomacy. . . . I will not allow anyone, in a parallel regime to control the negotiations or to direct Naftogaz. Simply speaking—I need two things: don't throw a spoke in the wheel and don't stab any backs.[64]

D. January 17-19, 2009: A Deal is Reached

On January 17, Tymoshenko flew to Moscow to meet with Putin.[65] After a four-hour meeting, they held a press conference announcing that they had reached an agreement.[66] In post-trial interviews, Skadden was told that no mention was made at the press conference about the agreed-upon price.[67] At trial, Yushchenko expressed his shock at the announcement and testified that he "had no idea on which terms this issue was resolved."[68] However, contemporaneous press accounts reported that under the proposed agreement, "Ukraine will pay 20 percent less than the European 'market price' price for gas this year, which Russia says is $450 per 1,000 cubic meters."[69]

---

had enough gas reserves to last through the winter. *See* Yushchenko Skadden Interview at 9-10 (Apr. 19, 2012); *Yushchenko contradicts Tymoshenko on gas talks*, KYIV POST, Jan. 16, 2009, http://www.kyivpost.com/news/nation/detail/33548/.

64 *Yushchenko contradicts Tymoshenko on gas talks*, KYIV POST, Jan. 16, 2009, http://www.kyivpost.com/news/nation/detail/33548/.

65 Yushchenko testified at trial: "In the morning I get to the office and I am told that Tymoshenko went to Moscow. I was extremely surprised, to put it very mildly." Trial Transcript at 9 (Aug. 17, 2011). Shlapak told Skadden that Tymoshenko was the only high-ranking Ukrainian official in attendance at this meeting. Shlapak Skadden Interview at 9 (May 15, 2012). Dubyna testified at trial that "[o]n January 17, 2009, Prodan and I went to Moscow, as instructed by the Prime Minister. The negotiations we held there were fruitless." Trial Transcript at 11 (July 29, 2011). It is unclear whether the negotiations mentioned by Dubyna also involved Tymoshenko or Putin.

66 Yushchenko commented at trial: "Tymoshenko shows up in Moscow, meets with Vladimir Putin, they run this summit, then they together announce that the problem for the whole two weeks was such a pain for Europe and Ukraine, this crisis that was larger-than-life, was finally resolved by two people." This was a public announcement, I saw it on the TV . . . ." Trial Transcript at 9 (Aug. 17, 2011).

67 Yushchenko Skadden Interview at 9-10 (Apr. 19, 2012); Yushchenko Skadden Interview at 5 (May 30, 2012); Shlapak Skadden Interview at 9 (May 15, 2012).

68 Trial Transcript at 9 (Aug. 17, 2011).

69 *Ukraine, Russia reach gas deal; Europe still waits*, KYIV POST, Jan. 18, 2009, http://www.kyivpost.com/news/nation/detail/33639/.

E. January 19, 2009: Tymoshenko Meets with Yushchenko

On the morning of January 19, Tymoshenko met with Yushchenko and his advisers in Kyiv.[70] Tymoshenko reported that she and Putin had reached an agreement on gas pricing and that, as a result of her negotiations, Ukraine would receive a 20 percent discount for the first year of the contract.[71] She stated that the deal was the best available and that further delays would be harmful. Yushchenko testified that during the course of the meeting he asked several times for the price terms, but that Tymoshenko declined to provide details, saying only that "[t]he price will be nice, and there will be a 20 percent discount on this price."[72] Tymoshenko did not testify about the meeting at trial, but she told Skadden that she "met with Yushchenko and Shlapak to inform them of everything. I informed them about the price of $233."[73]

F. January 19, 2009: Cabinet of Ministers Meeting

On the afternoon of January 19, the Vice Prime Minister, Oleksandr Turchinov, convened a meeting of the Cabinet of Ministers at Tymoshenko's request to discuss the negotiations. Accounts of the meeting differ sharply. The OPG claims that Turchinov called the meeting to seek the Cabinet's authorization for Tymoshenko to enter into a contract with Russia at the agreed-upon terms. Tymoshenko offers a different account,

---

[70] Yushchenko testified that the meeting happened on January 18, 2009: "The 18th started with the meeting with the Prime Minister. Yulia Volodymyrivna arrives with [Oleksandr] Shlapak and [Sokolovsky], and there is me. We had a meeting which went on for about 30 or 40 minutes." Trial Transcript at 9 (Aug. 17, 2011). The Court of Cassation also states that the meeting occurred on January 18. *See, e.g.*, Ruling on Behalf of Ukraine, *Tymoshenko v. Ukraine*, Court of Cassation of Ukraine 3 (Aug. 29, 2012).

[71] Yushchenko testified: "Yulia Volodymyrivna reports the so-called arrangements. . . . To my numerous requests for [her] to state the price, she says the whole time: 'The price will be nice, and there will be a 20 percent discount on this price.'" Trial Transcript at 9 (Aug. 17, 2011).

[72] *Id.*; *see also* Yushchenko Skadden Interview at 9-10 (Apr. 19, 2012); Yushchenko Skadden Interview at 7 (May 30, 2012); Shlapak Skadden Interview at 9 (May 15, 2012).

[73] Tymoshenko Skadden Interview at 8 (June 28, 2012).

contending that Turchinov brought the matter to the attention of the Cabinet of Ministers to inform them about the negotiations and to obtain their political support, not to seek their formal approval. This dispute is discussed further in Part III.B.3, *infra*. Both sides agree, however, that following the Cabinet's discussion, no vote was taken.

G. January 19, 2009: Tymoshenko and Dubyna in Moscow

Meanwhile, also on January 19, Tymoshenko flew to Moscow. At approximately 5:00 p.m., Tymoshenko and Putin met privately for two hours while Dubyna and other officials sat outside. After the meeting, Tymoshenko informed Dubyna and his deputy, Igor Didenko, that an agreement had been reached.[74] According to Dubyna, he resisted Tymoshenko's request that he endorse the terms she and Putin had negotiated.[75] At the press conference that followed,[76] Putin, Tymoshenko, Miller, and Dubyna stood in front

---

[74] Didenko testified: "Dubyna gave me a folder, I took a look and saw the guidelines. I wanted to get quickly through certain issues for myself there. I looked through quickly and saw 450 and 1.7; gas volume about 11 billion." Trial Transcript at 23 (July 29, 2011); Dubyna Skadden Interview at 4 (Apr. 18, 2012). Didenko told Skadden that he was concerned about Tymoshenko meeting alone with Putin, saying "[y]ou cannot be alone with the sharks." Didenko Skadden Interview at 1 (May 23, 2012). He went on to say that when Tymoshenko came out of her extended one-on-one meeting with Putin, she told Dubyna and Didenko what the terms of the contract would be. "When I heard those terms," said Didenko, "I went crazy. I told her, 'This is very bad.'" *Id.*

[75] Trial Transcript at 12 (July 29, 2011). According to Dubyna, "Putin and Tymoshenko came out of the one-on-one meeting and started walking towards the press conference. I followed them and asked Tymoshenko what was happening. She said they were going to sign a contract. I said, 'How are we going to sign contracts? They are not fully negotiated and we haven't agreed on terms yet.'" Dubyna Skadden Interview at 4 (Apr. 18, 2012); *see* Frolov Skadden Interview at 12-13 (May 16, 2012) ("In the early afternoon on January 19th, I was at Gazprom headquarters and I watched the feed of the press conference. I didn't understand what Miller and Dubyna were signing. Our Gazprom colleagues also did not know what the parties were signing, and no one at Naftogaz knew what they were signing. . . . On January 19th, we watched the signing of a contract but I don't know which contract. Didenko came back, and told us that the leaders had reached an agreement. I don't know what leaders. Golubev, the Deputy Head of Gazprom, came into the room and confirmed that there was an agreement.").

[76] Dubyna told Skadden that when Putin and Tymoshenko came out of the meeting, she told Dubyna, "'We're signing the agreement' . . . and she walked straight towards a press conference." Dubyna Skadden Interview at 4 (Apr. 18, 2012).

of the cameras for a public signing.[77] Miller signed a ten-year contract with the terms that Tymoshenko and Putin had discussed. According to Dubyna, however, he signed a different contract—a one-year contract with different price terms.[78] As Tymoshenko and Dubyna left the press conference, they had a one-on-one conversation in which Dubyna claims Tymoshenko criticized him for failing to sign the ten-year deal. Dubyna says he insisted that he would not sign unless he received a governmental order to do so.[79]

The OPG claims that Tymoshenko then presented Dubyna with a document approving the deal. A document entitled "The Directives" was introduced at trial, and the OPG has provided Skadden with a photocopy of the document introduced at trial. The document bears the seal of the Cabinet of Ministers and what appears to be Tymoshenko's signature. The document contains negotiating instructions to the Naftogaz delegation, including with regard to:

- *Gas Price Formula*: "in concluding the Natural Gas Purchase and Sale Contract for 2009–2019 for consumers in Ukraine, to follow the terms of the natural gas purchase under a direct contract signed with OAO Gazprom, using a price formula, which shall account for basic oil product components used in the European countries (heating oil, petroleum oil), providing for a 20 percent discount from the natural gas basic price level, which was determined based on the result of agreements reached between the Prime Ministers of Ukraine and the Russian Federation on January 17, 2009, in the amount of $450 for 1,000 cubic meters;"

- *Transit Price Formula*: "in the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019, to provide for the payment rate for transit in 2009 equal to $1.7 for 1,000 cubic meters per 100 km of distance, as well as calculation of the payment rate for transit in 2010 based on a formula, which will compensate Naftogaz for all operating expenses associated with the transit of natural gas, full cost of fuel gas, depreciation value of the gas transportation system used for the transit, based on the fair market value of the gas

---

77 Didenko testified: "My boss signed in front of the cameras the agreement, which it was agreed they would sign together with Miller. I signed the rest." Trial Transcript at 23 (July 29, 2011).

78 Dubyna Skadden Interview at 4-5 (Apr. 18, 2012).

79 Trial Transcript at 23 (July 29, 2011); Didenko Skadden Interview at 1 (May 23, 2012).

transportation system, as well as the cost of capital calculated using the Naftogaz cost of capital effective rate and the fair market value of the gas transportation system used for the transit. This formula must account for indexation of all the above components in accordance with actual market conditions;" and

- *Purchase of Stored Gas*: "before ___________ 2009, to acquire from OAO Gazprom the right of claim for at least 10.345 billion cubic meters of natural gas with total value of $1.6 billion owned by RosUkrEnergo AG and stored in the underground gas storage facilities of Ukraine. The payment shall be made out of the funds obtained as an advanced payment for services to be performed in 2009 under the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019."[80]

According to the OPG, this document purported to be an order of the Cabinet of Ministers, which Tymoshenko gave to Dubyna to compel him to sign the agreement with Gazprom. Tymoshenko's alleged use of the Directives was a linchpin of the case against her. Tymoshenko, however, disputes having given Dubyna orders on behalf of the Cabinet, arguing instead that she gave Yuriy Prodan instructions that merely memorialized the deal she had reached with Putin, and that Prodan gave them to Dubyna. Several other aspects of this episode also are contested, including Tymoshenko's objection that the document introduced at trial is not the one she says she gave to Prodan. These disputes, and the evidence on which they are based, are explored in Part III.B.5-6, *infra*.

Following this disputed episode, the Ukrainian delegation went to Gazprom at approximately 9:00 p.m. and finalized contracts for the purchase and transit of natural gas. The contracts were signed by Dubyna and Didenko early the next morning, and a press conference was held to announce the agreement.[81] Contemporaneous press accounts

---

[80] The Directives at 2 (Jan. 19, 2009).

[81] Didenko testified: "The transit agreement was signed on January 19, 2009." Trial Transcript at 22 (July 29, 2011); Dubyna Skadden Interview at 4 (Apr. 18, 2012); Didenko Skadden Interview at 1 (May 23, 2012).

reported that Naftogaz had agreed to purchase gas for 2009 at a 20 percent discount from the average European price, adjusted quarterly.[82] Russia had stated the price as $450/kcm for the first quarter of the year, a price that was expected to drop later in the year. Tymoshenko was quoted as saying that Ukraine would end up paying approximately $230 for 2009; Yushchenko's energy adviser, Bohdan Sokolovsky, said that Ukraine would likely pay $235-$240 for the year.[83]

H. January 21, 2009: Cabinet of Ministers Meeting

Tymoshenko and the Naftogaz delegation returned to Kyiv on January 20.[84] Tymoshenko gave a press conference on January 21, regarding the deal she had negotiated on behalf of Ukraine.[85] Yushchenko criticized the deal, publicly warning in a speech against "alluring promises."[86]

Also on January 21, the Cabinet of Ministers met to discuss the gas agreement. Tymoshenko praised the agreement as beneficial to Ukraine. She argued that basing gas

---

82 *See Russia Ukraine reach gas deal: Europe still waits*, KYIV POST, Jan. 19, 2009, http://www.kyivpost.com/content/ukraine/ukraine-russia-reach-gas-deal-europe-still-waits-33639.html.

83 *See Yushchenko's energy adviser: Average 2009 price for gas will be $240, up from current $179.50*, KYIV POST, Jan. 20, 2009, http://www.kyivpost.com/news/nation/detail/33753/; *Update: Gas Restart Order in Place; Tymoshenko Says Ukraine Price $230 for 2009*, KYIV POST, Jan. 20, 2009, http://www.kyivpost.com/news/nation/detail/33760/.

84 Dubyna Skadden Interview at 6 (Apr. 18, 2012).

85 *Id.*

86 *Yushchenko, Tymoshenko again trade insults over gas deal*, KYIV POST, Jan. 22, 2009, http://www.kyivpost.com/news/nation/detail/34007/. Yushchenko told Skadden that he submitted an official request to Tymoshenko asking her to disclose the details of the agreement. She responded that she did not have the agreement, which was at the office of Naftogaz. When Yushchenko called Naftogaz, he was told that the documents were with Tymoshenko. *See* Yushchenko Skadden Interview at 10 (Apr. 19, 2012); Yushchenko Skadden Interview at 9 (May 30, 2012). Yushchenko said that he believes Tymoshenko was lying when she claimed not to have access to the agreement. *Id.* at 10 (Q: "Did [Tymoshenko] lie to you when she said that she did not have the contract?" A: "Yes. She knew quite well where the document was."). Yushchenko also said that he asked the Security Service to find out the terms of the agreement, and he received them on around January 26 or 27. *See* Yushchenko Skadden Interview at 10, 13 (Apr. 19, 2012); Yushchenko Skadden Interview at 9 (May 30, 2012).

prices on a market-based formula would provide "an absolutely new level of political and energy independence" for the next 10 years.[87] She did not discuss the specifics of the pricing formula, other than to note that Ukraine obtained a "preferential price formation" for 2009, estimating that Ukraine would pay an average price of $228.8/kcm.[88] At the end of the meeting, Turchinov called on the Ministers to "vote and approve these results."[89] A vote was taken, with 14 Members voting in favor of approval, one voting against, and eight abstaining.[90]

I. The Contracts

On January 22, the gas-purchase contract was published by Ukrainska Pravda, a Ukrainian internet newspaper.[91] The OPG has provided Skadden with a copy of this contract, as well as the gas-transit contract. The gas-purchase contract, which covers the

---

87 Cabinet of Ministers Transcript at 1 (Jan. 21, 2009).

88 *Id.* at 2. Near the end of the meeting, Tymoshenko offered to answer any questions about the agreement's terms:

> Any questions regarding the system of supplying Ukraine with the natural gas? Any questions on nuances? I am prepared to answer all the questions. Do you have questions for me to clarify any details?

Id. at 9.

89 *Id.* at 9.

90 *Id.* Tymoshenko told Skadden that "[t]he vote was only for political adoption. . . . In legal terms, it was not necessary." Tymoshenko Skadden Interview at 13 (June 28, 2012). The OPG told Skadden that the vote had no legal effect. *See* Mikitenko et al. Skadden Interview (July 19, 2012).

91 *The Gas Agreement of Tymoshenko-Putin. The Full Text*, UKRAINSKA PRAVDA, Jan. 22, 2009, http://www.pravda.com.ua/rus/articles/4b1ab16443461/. Ukrainska Pravda attached the agreement to a cover page that contains the following text:

> Ukrainska Pravda has received a contract on a gas supply to Ukraine during 2009-2019. This contract was signed on 19 January by the 'Naftogaz' and 'Gazprom' executives as the result of negotiations between Yulia Tymoshenko and Vladimir Putin.
>
> 'Naftogaz' refused to publicize the contract referring to its confidentiality. At the same time 'Ukrainska Pravda' is publishing the full text of the contract, given its public importance, it determines the gas price for Ukraine for the nearest ten years.

period from January 1, 2009, through December 31, 2019, states that Naftogaz is represented by Dubyna.[92] It provides a "contract price" for natural gas, defined as $360/kcm for the first quarter of 2009. After that, the price was to be determined by a formula:

$$P_n = P_0 (0.5 \text{ x } G/G_0 + 0.5 \text{ x } M/M_0) \text{ x } k$$

P_0, G_0, M_0, and k are defined numerical constants; G and M are variables.[93] The constant "P_0" is defined as "the base price totaling $450 per 1,000 cub. M. of Gas."[94] G and M are described as "parameters," the value of which reflect average European gas oil and fuel oil prices, adjusted quarterly.[95] The gas-purchase contract also contains the following provision:

> If either of the Parties announces that the situation in the fuel and energy product market has changed substantially from what the Parties reasonably expected when entering into this Agreement, and the contract price . . . does not reflect the level of market prices, the Parties shall commence negotiations to review the contract price in accordance with the provisions of this Agreement.[96]

The gas-transit contract, which covers the same time period, states that Naftogaz is represented by Didenko.[97] The contract specifies the payment for transit to be $1.7 for

---

92 Agreement No. KP of January 19, 2009 for the Purchase and Sale of Natural Gas from 2009 to 2019 at Art. 2.

93 *Id.* at Art. 4.1. Under the contract, P_0 = $450/kcm, G_0 = $935.74/metric ton, M_0 = $520.93/metric ton, and k = 0.8 in 2009 and 1 in 2010.

94 *Id.*

95 *Id.*

96 *Id.* at Art. 4.4.

97 Contract No. TKGU, Concerning the Volumes, Terms, and Conditions of Natural Gas Transit Through the Territory of Ukraine over the Period Extending from 2009 Through 2019 at 3 (Jan. 19, 2009).

2009. After that, the price was to be determined by a formula that adjusts the current year's transit price based on (among other things) the prior year's price and inflation.[98]

Separately, Gazprom also agreed to sell approximately 11 bcm of stored gas to Naftogaz at a price of $153.9/kcm.[99] According to a government report, taking account of this stored gas, Ukraine paid an average price for gas in 2009 of $232.98/kcm.[100] The prior year, Ukraine had paid $179.50/kcm.[101] Aspects of this deal were later renegotiated. For instance, in the so-called "Kharkiv Treaty," Russia agreed to provide a $100 discount to Ukraine in return for a receiving a 25-year lease extension on their naval base in Sevastopol.[102]

J. The Investigation and Indictment

Prior to the criminal investigation of Tymoshenko, there were at least three Governmental inquiries relating to the January 2009 agreement. First, Yushchenko referred the matter to the National Security Council. At a meeting that took place in February 2009, which Tymoshenko attended, the Council decided to create a commission to analyze the contract and determine its legality. This was not a criminal inquiry, and the intent was not to investigate Tymoshenko.[103] Second, Ukraine's parliament, the Verkhovna Rada, pursued a separate investigation under The Temporary Inquiry

---

98 *Id.* at Art. 8.1.

99 The legality and effect of this sale is disputed. *See* Part III.B.9.d, *infra*.

100 Report No. 4049/11-19 Legal and Economic Analysis for Criminal Case No. 49-3151 at 2 (May 12, 2011).

101 *Medvedev calls for gas summit; European Union urges lawsuits*, KYIV POST, Jan. 14, 2009, http://www.kyivpost.com/news/world/detail/33306/print.

102 Borodin Skadden Interview at 4 (May 14, 2012).

103 Yushchenko Skadden Interview at 10-11, 13 (Apr. 19, 2012); Yushchenko Skadden Interview at 8 (May 30, 2012).

Commission to Investigate Circumstances of the Signing of Gas Contracts between NAK "Naftogaz of Ukraine" and OAO "Gazprom" Concerning the Signs of High Treason in the Sphere of Ukraine's Economic Security.[104] Third, a Ukrainian internal government audit was conducted by the State Audit Department, which in the end completed its own independent report.[105] This internal audit investigation and report limited the examination to those circumstances surrounding the signing of the gas agreement and the amount of damages Ukraine suffered as a result.[106]

Based on her involvement in negotiating the 2009 Gazprom-Naftogaz agreement, the OPG formally initiated a criminal case against Tymoshenko on April 11, 2011.[107] The case was based on the theory that Tymoshenko had overstepped her authority by ordering Dubyna to sign the agreement absent approval by the Cabinet of Ministers and by misleading him into thinking that the Cabinet had already approved the agreement. On April 27 and May 24, Tymoshenko was indicted under Ukrainian Criminal Code

---

[104] Report of The Temporary Inquiry Commission to Investigate Circumstances of the Signing of Gas Contracts between NAK "Naftogaz of Ukraine" and OAO "Gazprom" concerning the Signs of High Treason in the Sphere of Ukraine's Economic Security, The Verkhovna Rada of Ukraine. This document is not dated, but it was voted upon by the Verkhovna Rada on March 22, 2011. *See Ukrainian Government Report Finds Tymoshenko Guilty of Treason*, NTD NEWS, Mar. 26, 2012, http://ntdtv.org/en/news_europe/2012-03-26/ukrainian-government-report-finds-tymoshenko-guilty-of-treason.html.

[105] Ruban Skadden Interview at 1 (May 25, 2012).

[106] *Id.* at 2.

[107] Briefing on the Chronology of the Criminal Case against Yulia Tymoshenko in the Pretrial and Trial States at 1 (document provided to Skadden by the OPG); Application, *Tymoshenko v. Ukraine*, App. No. 49872/11, at ¶ 9 (Eur. Ct. H.R. Aug. 10, 2011) ("Tymoshenko Application"); Memorandum from E.A. Kotets, Department of Criminal Investigations of the General Prosecutor's Office of Ukraine at 1 (June 6, 2011).

article 365(3), which outlaws acts in "[e]xcess of authority or official powers" that cause "grave consequences."[108]

The Act of Indictment against Tymoshenko is 84 pages. The first several pages cite laws and constitutional provisions that govern the powers of the Prime Minister and the Cabinet of Ministers.[109] Notably, the Indictment cites a December 2005 Decree for the proposition that "the entire scope of powers with respect to implementation of rights of the state as the owner of the corporate rights of [Naftogaz] . . . belongs to the Ministry of Fuel and Energy of Ukraine."[110] The Indictment also describes several gas-pricing agreements between Russia and Ukraine, as well as domestic enactments tied to them, including: (1) an October 2001 agreement between the Cabinet of Ministers and the Russian Government, "which was ratified by Law of Ukraine No. 2797-III . . . on November 15, 2001,"[111] and (2) a 2008 Decree issued by the President, "by which the Guidelines were approved for the delegation of Ukraine to the negotiations with the Russian Federation on the issues of transition to the direct schemes of cooperation in the gas area." [112]

The Indictment provides a narrative of Tymoshenko's participation in the 2008-2009 gas negotiations. Accusing her of "wishing to create a positive image of the effective state leader who was able to resolve the 'gas crisis,'" the Indictment alleges that she agreed to "economically profitless and unacceptable" pricing terms between Naftogaz

---

108 Briefing on the Chronology of the Criminal Case against Yulia Tymoshenko in the Pretrial and Trial States at 1.

109 Act of Indictment at 2-4.

110 *Id.* at 4 (citing Decree No. 1205 of the Cabinet of Ministers of Ukraine).

111 *Id.* at 3.

112 *Id.* at 4 (citing Decree No. 165/2008).

and Gazprom.[113] According to the Indictment, Tymoshenko drafted a document with these terms and, "continuing to abuse her power and official duties, approved these guidelines in person and affixed the seal of the Cabinet of Ministers of Ukraine."[114] She did this despite knowing that "the Prime Minister of Ukraine is not authorized to issue guidelines single-handedly."[115] After Dubyna refused to sign the gas contracts, Tymoshenko "instructed Oleh V. Dubyna to sign them and handed over to him the above guidelines, mandatory for execution, providing to him the wrong information that the provisions of the above guidelines had been approved" by the Cabinet.[116]

The Indictment summarizes that "[s]igning of the contracts based on the above guidelines approved by . . . Tymoshenko" was an act "in defiance of the agreements between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation," namely, in defiance of Law No. 2797-III.[117] Due to the agreement, the resulting price of natural gas for Ukraine grew from $179.5/kcm in 2008 to $232.98/kcm in 2009 (an increase of $53.48/kcm), while the transit rate remained unchanged at $1.7.[118]

---

113 *Id.* at 6 ("Tymoshenko decided to single-handedly make the decision to execute the above agreements under the conditions mentioned above.").

114 *Id.* at 7 ("[S]he personally drafted and submitted for printing by persons not determined by the investigation the executive document—guidelines of the Prime Minister of Ukraine for the delegation of [Naftogaz] for the negotiations with [Gazprom] on the execution of the Contract of purchase and sale of natural gas in the years 2009-2019 and the Contract on the extent and conditions of transit of natural gas through the territory of Ukraine for the period of 2009-2019.").

115 *Id.* at 8 ("In addition, she was aware that the volumes of transit and the amount of payment in cash for the transit of natural gas through the territory of Ukraine are to be determined on the annual Intergovernmental protocols for the respective year as defined in the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on additional measures to secure the transit of Russian natural gas through the territory of Ukraine dated October 14, 2001, and not in external economical agreements or contracts.").

116 *Id.* at 9.

117 *Id.*

118 *Id.* at 8.

The Indictment concludes that this price increase "has caused grave consequences" to Ukraine, costing $194,625,386.70 (equivalent to 1,516,365,234.94 UAH).[119]

K. Conviction and Appeals

Tymoshenko was tried between June 24 and September 30, 2011, in the Pechersky District Court of Kyiv. Judge Rodion Kireyev presided. On October 11, Judge Kireyev issued a Judgment in the Name of Ukraine convicting Tymoshenko under Criminal Code Article 365(3), finding that she "criminally misused the rights granted to her and her official position and, acting intentionally, committed acts, which were expressly outside the scope of her authority and powers, resulting in grave consequences."[120] (The basis for Judge Kireyev's opinion is discussed in Part III, *infra*.) Judge Kireyev found that Tymoshenko engaged in these acts "to create her own positive image as an effective leader of state, who managed to resolve the 'gas crisis' in the relationship with the Russian Federation right before the presidential elections in Ukraine."[121] He sentenced her to seven years of incarceration and disqualification from the right to hold public office for three years. He also granted a civil claim against her by Naftogaz, imposing liability in the amount of the damage that he found she had caused—namely, 1,516,365,234.94 hryvnas or, at the time, approximately $194,625,386.70.[122]

---

119 *Id.* at 9.

120 Judgment in the Name of Ukraine at 1 (Oct. 11, 2011).

121 *Id.* at 4; In an interview with Skadden, members of the OPG asserted that Tymoshenko's acts were also attributable to her desire to resolve the charges brought against her in Russia for bribing five officers of the Russian Ministry of Defense. Kuzmin et al. Skadden Interview at 6 (Apr. 13, 2012). Tymoshenko's failure to comply with a Russian interrogation request regarding these charges resulted in her being placed on Interpol's "international wanted list." *INTERPOL DECLARED YULIA TYMOSHENKO WANTED,* Obyektivnaya gazeta, (not dated), http://og.com.ua/st342.php. In his opinion, Judge Kireyev did not cite the Russian charges or the Interpol action to be among Tymoshenko's motives.

122 *Id.* at 50-51 (Oct. 11, 2011).

Tymoshenko appealed her conviction to the Ukrainian Court of Appeals, which dismissed her appeal on December 23, upholding her conviction and sentencing.[123] The Court's opinion mirrors the narrative previously provided in the district court opinion, concluding that Tymoshenko abused her authority and official powers by "single-handedly" approving Gazprom/Naftogaz negotiation guidelines and manipulating Dubyna into believing the guideline provisions had been approved on January 19, 2009, by a Cabinet of Ministers directive.[124] The Court of Appeals held Tymoshenko's claim that her conviction was based on insufficient admissible evidence was unfounded, as were her arguments that her conduct lacked "purpose, criminal motive, or specific intent."[125] The Court also held unfounded Tymoshenko's claim that the investigating officer and district court "caused the pretrial investigation and court investigation to be incomplete," noting that "calling and questioning additional witnesses or conducting face-to-face interviews between Yulia V. Tymoshenko and witnesses are the court's right rather than the duty and, for this reason, failure to do so cannot be regarded as a violation of law."[126] The Court ultimately concluded none of Tymoshenko's claims were meritorious, and that the investigation and trial were "completed in full, comprehensively, and objectively, without any substantial violations of the law of criminal procedure, and the court has applied all proper remedies to examine and assess the evidence properly."[127]

[123] Ruling in the Name of Ukraine, *Tymoshenko v. Ukraine*, Kyiv City Court of Appeal at 36 (Dec. 23, 2011).

[124] *Id*. at 29.

[125] *Id*. at 25.

[126] *Id*. at 27-28.

[127] *Id*. at 29.

Tymoshenko subsequently appealed her conviction to the Ukrainian Court of Cassation, which upheld the district court and Court of Appeals decisions on August 29, 2012.[128] Like the Court of Appeals, the Court of Cassation adopted a narrative of Tymoshenko's actions that paralleled the one adopted by the district court. The Court concluded that Tymoshenko had acted in excess of her official powers by personally approving the negotiating guidelines known as the Directives, affixing the seal of the Cabinet of Ministers to the document, and instructing Dubyna that the Directives had been approved by the Cabinet of Ministers.[129] The Court of Cassation found "groundless" Tymoshenko's claims of an "absence of proper and admissible evidence proving . . . guilt" and an "absence in her actions of direct intent and motive for the crime."[130] In addition, the Court rejected Tymoshenko's claim of an incomplete investigation, determining that "the [trial] court investigated a sufficient number of pieces of evidence, including testimony of multiple witnesses, conclusion of a number of court experts, and documents."[131] Ultimately, the Court of Cassation found no "violations of criminal procedure by the pretrial investigation, by the trial court or by the Court of Appeals that would require unconditional abolition of the judicial decisions concerning Tymoshenko," and accordingly upheld Tymoshenko's conviction and sentence in their entirety.[132]

---

[128] Ruling on Behalf of Ukraine, *Tymoshenko v. Ukraine*, Court of Cassation of Ukraine 44 (Aug. 29, 2012).

[129] *Id.* at 5-6.

[130] *Id.* at 21.

[131] *Id.* at 22.

[132] *Id.* at 39.

III. The Dispute

This section looks in greater detail at key aspects of the dispute, including the parties' differing legal theories and the evidence presented at trial for and against Tymoshenko's guilt.

A. The Offense

1. The Elements of the Offense

Tymoshenko was convicted under Ukrainian Criminal Code Article 365 for acting in "[e]xcess of authority or official powers" causing "grave consequences." Article 365 of the Criminal Code outlaws:

> Excess of authority or official powers, that is a willful commission of acts, by an official, which patently exceed the rights and powers vested in him/her, where it caused any substantial damage to the legally protected rights and interests of individual citizens, or state and public interests, or interests of legal entities . . . .[133]

The offense thus requires proof of four elements: (1) the willful exercise of authority or official powers, (2) by an official, (3) that patently exceeds the rights and powers vested in that official, (4) thereby causing substantial damage to the legally protected rights and interests of individual citizens, to state and public interests, or to the interests of legal entities.

Such an offense is punishable by a term of imprisonment of two to five years, among other penalties. Conviction also results in "the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years." If the offense "caused any grave consequences," the term of imprisonment is seven to ten

[133] Criminal Code of Ukraine Art. 365(1) (Sept. 1, 2001).

years.[134] The Verkhovna Rada, Ukraine's parliament, recently considered—but ultimately rejected—a bill that would have decriminalized Article 365.[135]

2. The OPG's Theory of the Case

The OPG's case against Tymoshenko was based on the theory that she overstepped her authority by ordering Dubyna, head of Naftogaz, to sign an agreement with its Russian counterpart, Gazprom, in the absence of approval from the Cabinet of Ministers, and by deceiving Dubyna into believing the Cabinet had already approved the agreement.[136] According to the OPG, Tymoshenko abused her power and official duties in drafting "Directives" with these terms, approving them unilaterally, and affixing them with the seal of the Cabinet of Ministers—knowing in doing so that the Prime Minister is not authorized to issue such instructions single-handedly.[137]

More specifically, the OPG contends that Tymoshenko's actions exceeded her official powers in two respects. First, the OPG claims that as Prime Minister, she had no authority to direct a commercial entity, Naftogaz, to enter into a commercial agreement. Rather, that power belonged instead to the Minister of Fuel and Energy, to the Cabinet of Ministers, or to the President. Second, the OPG claims that Tymoshenko's directives were "in defiance of the agreements between the Cabinet of Ministers of Ukraine and the

---

134 *Id.* at Art. 365(3).

135 *Parliament again votes down proposal to decriminalize 'Tymoshenko article,'* KYIV POST, Feb. 8, 2012, http://www.kyivpost.com/content/politics/parliament-again-votes-down-proposal-to-decriminal.html.

136 Briefing on the Chronology of the Criminal Case against Yulia Tymoshenko in the Pretrial and Trial States at 1; Tymoshenko Application at ¶ 9; Memorandum from E.A. Kotets, Department of Criminal Investigations of the General Prosecutor's Office of Ukraine at 1 (June 6, 2011).

137 Act of Indictment at 6 ("Tymoshenko decided to single-handedly make the decision to execute the above agreements under the conditions mentioned above.").

Government of the Russian Federation."[138] The OPG claims that these laws required any future agreement between Naftogaz and Gazprom to link gas and transit prices—*i.e.*, that the laws required gas and transit prices to be "pegged" to one another—such that an increase in the price of gas paid to Russia would necessarily be accompanied by an increase in the transit price paid to Ukraine. Finally, the OPG alleges that Tymoshenko caused "grave consequences" to the nation by causing Naftogaz, a state-owned enterprise, to enter into terms that were "economically profitless and unacceptable" for Ukraine.[139]

The OPG asserts that the evidence submitted to the Court proved all elements of the offense and established Tymoshenko's guilt beyond a reasonable doubt, including that:

- Tymoshenko's authority was defined, restricted, and limited by several Ukrainian government documents including October 1, 2008 guidelines issued by President Yushchenko that "contained clear instructions: if the Russians insist on raising the natural gas price, then the Ukrainian party must insist on raising the transit rate,"[140] along with February 19, 2008 guidelines issued by President Yushchenko and an October 2, 2008 "Memorandum on Gas Cooperation" between the Russian Government and Ukrainian Cabinet of Ministers."[141]

- Knowingly acting in excess of her authority, Tymoshenko drafted "Directives" with improper terms, approved the Directives unilaterally, affixed them with the seal of the Cabinet of Ministers, and informed Dubyna that the Cabinet of Ministers had already approved the Directives, thereby deceiving him into signing the agreement with Gazprom.[142]

---

[138] *Id.* at 9.

[139] *Id.* at 6.

[140] *Id.* at 43.

[141] *Id.* at. 63.

[142] *Id.* at 6 ("Tymoshenko decided to single-handedly make the decision to execute the above agreements under the conditions mentioned above."); Briefing on the Chronology of the Criminal Case against Yulia Tymoshenko in the Pretrial and Trial States at 1; Tymoshenko Application at ¶ 9; Memorandum from E.A. Kotets, Department of Criminal Investigations of the General Prosecutor's Office of Ukraine at 1 (June 6, 2011).

- The agreement Tymoshenko forced Dubyna to sign was itself a violation of Ukrainian law, as it provided for an increase in the purchase price of gas without a corresponding increase in price of transit.[143]
- By causing Naftogaz, a state-owned enterprise, to enter into terms that were "economically profitless and unacceptable" for Ukraine, Tymoshenko caused "grave consequences" to the nation.[144]

3. Tymoshenko's Theory of the Case

Tymoshenko has denied the OPG's allegations that she overstepped her authority in managing the Ukraine-Russia gas dispute, alleging instead that her prosecution is a politically motivated effort to silence her and limit her future viability as a political candidate. Self-identifying as the "main competitor and opponent of [current President] Mr. Yanukovych," Tymoshenko describes her prosecution as one merely "falsified with the aim of political reprisal."[145]

Tymoshenko denies sole responsibility for the terms in the agreement and disputes that the agreement itself came at a cost to Ukraine. Tymoshenko challenges the OPG's characterization of the Directives, claiming that they were not "Guidelines of the Government;" instead, her guidelines were merely "instructions" that memorialized the arrangements agreed to by the Ukrainian and Russian prime ministers.[146] There can be

---

[143] Act of Indictment at 63.

[144] *Id.* at 6. Under the January 19, 2009 agreement, Ukraine's price for natural gas increased from the prior year by $53.48/kcm, while the price received for transporting Russian gas remained unchanged at $1.7. To calculate damages, the OPG points to the volume of so-called "technical gas"—*i.e.*, gas consumed by Naftogaz to facilitate the transit of Russian gas to Europe—that Naftogaz purchased in 2009 at the higher price. Based on that volume, according to OPG, the higher purchase price produced a loss for the company of $194,625,386.70 (equivalent to 1,516,365,234.94 UAH) for Naftogaz. *Id.* at 9.

[145] *Id.* at 17.

[146] *Id.* at 16 ("I executed this instruction in the form of the Guidelines of the Prime Minister of Ukraine, which has nothing to do with the Guidelines of the Cabinet of Ministers of Ukraine."); *id.* at 17 ("There are no signs indicating that these Guidelines were the Guidelines of the Cabinet of Ministers of Ukraine.").

no doubt, she argues, that she had the legal authority to issue such guidelines and instructions of the Prime Minister. She also challenges whether any official instructions from the Cabinet of Ministers were needed, as she claims the Prime Minister is authorized under the Constitution and laws of Ukraine to independently conduct and to direct negotiations—and to issue "instructions" without prior approval from the Cabinet of Ministers.[147] Finally, Tymoshenko disputes that her actions caused any damage to Ukraine, much less "grave consequences."[148]

According to Tymoshenko, the evidence at trial indicated that:

- No official instructions from the Cabinet of Ministers were needed, because the Prime Minister is authorized under the Constitution and laws of Ukraine to independently conduct and direct negotiations, and to issue "instructions" without prior approval from the Cabinet of Ministers.[149]

- The Cabinet of Ministers' meeting held on January 19 was not convened for the purpose of obtaining a formal vote to approve the gas agreement reached with Russia, but rather, to keep the Ministers apprised of the negotiations.[150]

- The Directives were not "Guidelines of the Government," as characterized by the prosecution, but were merely "instructions" for Naftogaz that memorialized the arrangements agreed to by the Ukrainian and Russian Prime Ministers.[151]

---

147 Act of Indictment at 16.

148 *Id.*

149 *Id.* at 16 ("[T]he Prime Minister, according to the Constitution and Laws of Ukraine, may independently conduct negotiations and give all Guidelines to Naftogaz NJSC . . . ."(quoting testimony of Tymoshenko)).

150 *Id.* ("Turchinov did not and could not put these Guidelines to vote since this is beyond the competence of the Government, which he explained at the end of the meeting, saying that there is no need to approve any guidelines at a meeting of the Government . . . ." (quoting testimony of Tymoshenko)).

151 *Id.* ("I executed this instruction in the form of the Guidelines of the Prime Minister of Ukraine, which has nothing to do with the Guidelines of the Cabinet of Ministers of Ukraine." (quoting testimony of Tymoshenko)); *id.* at 17 ("There are no signs indicating that these Guidelines were the Guidelines of the Cabinet of Ministers of Ukraine." (quoting testimony of Tymoshenko)).

- Tymoshenko did not tell Dubyna that the Cabinet of Ministers had voted to approve the Directives.[152]

- She did not give her instructions to Dubyna but to Prodan, Minister of Fuel and Energy.[153]

- The ultimate terms in the agreement, including the price that Ukraine paid for gas in 2009 ($232.98/kcm), were more advantageous than those discussed in October and December 2008.[154] She also argues that the OPG's calculation of damages were factually and legally flawed for a variety of reasons.[155]

Tymoshenko also disputes several of the OPG's legal arguments, including whether the terms of her instructions violated any existing legal requirements (such as the 2008 documents cited by the OPG).[156]

B. The Judge's Opinion

In convicting Tymoshenko, Judge Kireyev found the following:

1. Between January 17-19, 2009, Tymoshenko led the negotiations between Russia and Ukraine in an effort to conclude a new agreement on the purchase of natural gas. She engaged in direct and private one-on-one discussions with Prime Minister Putin of Russia about the price of natural gas. She announced—without consulting President Yushchenko—that, out of those discussions, an agreement had been reached between Russia and Ukraine.[157]

2. Tymoshenko met with President Yushchenko on the morning of January 19 and informed him that an agreement had been reached, but she did not disclose to him the terms of the agreement.[158]

---

152 Trial Transcript at 13 (Sept. 7, 2011).

153 *Id.* at 13, 28.

154 *Id.* at 15. Though the OPG relies on the $450 "base price" figure in emphasizing what it depicts as grave consequences for Ukraine, Tymoshenko describes this figure as but one part of a fluctuating market-based formula, and points out that the OPG ignores the 20 percent discount for 2009 purchases that resulted from her negotiations. *See id.*

155 *See* Part III.B.9, *infra*.

156 Act of Indictment at 16.

157 Judgment in the Name of Ukraine at 3, 21, 41 (Oct. 11, 2011).

158 *Id.* at 20-21.

3. Tymoshenko instructed her Deputy, Oleksandr V. Turchinov, First Vice Prime Minister of Ukraine, to convene an emergency session of the Cabinet of Ministers on January 19, 2009 for the purpose of approving the terms she had negotiated. Turchinov was unable to obtain such approval.[159]

4. Tymoshenko traveled to Moscow on January 19, 2009 for the purpose of meeting again with Prime Minister Putin and arranging for a public signing of the agreement. While there, she was told by the Chairman of the Board of Naftogaz, Oleh Dubyna, that he disagreed with the terms set forth in the new agreement and would not sign such an agreement without having evidence in writing that the Government of Ukraine supported the agreement. She threatened to have Dubyna fired from his job if he did not sign the agreement.[160]

5. Tymoshenko wrote and arranged for the preparation of an official-looking document that she entitled "Directives" and that contained the basic terms of the new agreement. She personally approved and signed the Directives, which bore the seal of the Cabinet of Ministers of Ukraine.[161]

6. Tymoshenko gave Dubyna a copy of the Directives and falsely informed him that the Directives had been approved by the Cabinet of Ministers.[162]

7. Under those circumstances, Oleh Dubyna signed the January 19, 2009 Agreement between Naftogaz and Gazprom.[163]

8. By issuing the Directives, Tymoshenko exceeded her legal authority.[164]

9. Tymoshenko's actions caused grave damage to the nation.[165]

The following sections identify and discuss the evidence supporting these findings, as well as contrary evidence from the defense.

---

159 *Id.* at 4-5.

160 *Id.* at 7.

161 *Id.* at 4.

162 *Id.* at 5.

163 *Id.*

164 *Id.* at 3-8.

165 *Id.* at 5, 13-14.

1. Tymoshenko Led Negotiations with Putin on January 17

On January 1, 2009, Russia diminished the flow of gas into Ukraine, and within a week, it was shut off completely.[166] Tymoshenko attended a meeting in Moscow on January 17, at which she and Putin eventually reached a deal to end the stalemate.[167] According to Judge Kireyev, a governmental delegation "headed by" Tymoshenko arrived in Moscow, and "she personally met with the chief officials of the Russian Federation Government and the management of Gazprom."[168] These events were not contested at trial. Tymoshenko testified:

> [O]n the 17th and 18th of January 2009 I was involved in the negotiation process in Moscow for almost 24 hours straight . . . .[169]
>
> It was only a matter of days until we no longer could function without the Russian gas supplies. Against this background, in the second half of January, Russia initiated the Moscow conference on issues of ensuring of the Russian gas supplies to Europe on January 17, 2009. I heard in Yushchenko's testimony that he believed that I should not have attended this conference. Just imagine, it is an international conference with the heads of governments of all countries, who are left without gas, and Ukraine is not represented there, although they all believe that Ukraine is precisely the one who caused the whole thing. . . . Under these circumstances, in the second half of January 2009 I had to attend this international conference in the line of duty, according to my level of responsibility and involvement in this issue. . . . If I had not attended the

---

[166] The level of desperation caused in Ukraine by Russia's termination of the gas flow is disputed. *See* n. 58 and accompanying text.

[167] Yushchenko testified that he asked Tymoshenko to *not* attend the Moscow meeting. *See* Trial Transcript at 9 (Aug. 17, 2011) ("I call [Tymoshenko], at about 1 or 1:30 a.m. and inform her that the negotiations were such and such, and there is an impression that we get an increased level of support and that Ukraine is already not so isolated and alone. . . . Towards the end of my conversation with [her] I tell her: 'Yulia Voldymyrivna, I must ask you not to go to Moscow summit.' To be honest, she readily agreed, she said almost immediately: 'But of course, Viktor Andriyovych, I won't go to Moscow.'").

[168] Judgment in the Name of Ukraine at 3 (Oct. 11, 2011).

[169] Trial Transcript at 23 (Sept. 7, 2011).

> conference, it would have been an international scandal, which could result in just anything.[170]

Turchinov, Tymoshenko's deputy, testified:

> The Government worked round-the-clock but with no progress in the negotiations, and then, when our leaders were hiding from the responsibility, . . . Tymoshenko took over the responsibility. Besides her, nobody could now solve the problem, and she departed for the negotiations to Moscow and, on January 17-18, she held negotiations with the President of the Russian Federation.[171]

Following the negotiating process, Tymoshenko and Putin announced that a deal had been reached. According to Yushchenko, he was not consulted about this agreement in advance:

> [Tymoshenko] shows up in Moscow, meets Vladimir Putin, they run this summit, then they together announce that the problem that for the whole two weeks was such a pain for Europe and Ukraine, this crisis that was larger-than-life, was finally resolved by two people. This was a public announcement, I saw it on the TV and, to be honest, I was shocked, because I had no idea on which terms this issue was resolved.[172]

2. Tymoshenko Met with Yushchenko on January 19

On the morning of January 19,[173] Tymoshenko met with Yushchenko and his advisers in Kyiv. According to Yushchenko's trial testimony:

> [Tymoshenko] arrives with [ ] Shlapak and [ ] Sokolovsky, and there is me. . . . To my numerous requests for [Tymoshenko] to state the price, she says the whole time: "The price will be nice, and there will be a 20 percent discount on this price."[174]

Shlapak offered a similar account:

---

[170] *Id.* at 57-58. Testimony to this effect was also provided by Mikhail Levinsky, Tymoshenko's Chief of Staff. *See* Trial Transcript at 10 (Sept. 5, 2011).

[171] Trial Transcript at 29 (Aug. 10, 2011).

[172] Trial Transcript at 9 (Aug. 17, 2011).

[173] Yushchenko testified that the meeting happened on January 18, 2009. *Id.*

[174] Trial Transcript at 9 (Aug. 17, 2011).

> At 9:00 on January 19, 2009 at the Secretariat of the President of Ukraine, the Prime Minister said that the negotiations were extremely challenging, but she said that they had given her a 20 percent discount on gas. . . . [She] didn't give any more details. Moreover, I asked my questions, but she didn't discuss issues related to the contract.[175]

Tymoshenko did not testify about the meeting at trial, but she told Skadden that she "met with Yushchenko and Shlapak to inform them of everything. I informed them about the price of $233."[176]

Yushchenko testified that Tymoshenko promised at the meeting to provide him with a draft of the agreement before signing it, but failed to do so:

> I suggested that Tymoshenko forward me the draft agreement, so that my financial department could work on it and prepare our own analytics on this issue. [Tymoshenko] said: "I am now getting on the plane, I will ask them and you will get the draft agreement." . . . The head of the Financial Department of the Presidential Secretariat calls Dubyna right away and asks him to send a copy of the draft agreement. He receives from Dubyna an answer that he cannot send it and that he would discuss this issue when the Prime Minister gets to Moscow. As a matter of fact, we did not get the agreement on the 18th, or the 19th, 20th, 21st, 25th.[177]

Shlapak similarly testified that Tymoshenko failed to provide a copy of the agreement:

> [T]he Prime Minister promised to provide copies of the contracts so we could study them. . . . Only from the media did I learn about the signing of the contracts. I saw the contracts 3-4 days after the Ukrainian delegation arrived in Kiev.[178]

---

[175] Trial Transcript at 18 (Aug. 15, 2011); *see also id.* at 15-16 ("[O]n January 19, 2009, on Monday morning at 09:00 there was a meeting of the President of Ukraine at which Ukrainian Prime Minister Yulia V. Tymoshenko indicated what agreements she had reached with the Prime Minister of the Russian Federation.").

[176] Tymoshenko Skadden Interview at 8 (June 28, 2012).

[177] Trial Transcript at 10 (Aug. 17, 2011); *see also id.* at 12 ("I believe that, being the highest official, I did not receive either a copy of the agreement, nor the signed agreements, nor a report from the signing, since they were political.").

[178] Trial Transcript at 16 (Aug. 15, 2011).

3. Tymoshenko Attempted to Obtain Approval from the Cabinet of Ministers

On the afternoon of January 19, the Vice Prime Minister, Oleksandr Turchinov, convened a meeting of the Cabinet of Ministers at Tymoshenko's request to discuss the negotiations. Before the meeting, Tymoshenko gave Turchinov "instructions" that reflected the deal she had negotiated with Putin.[179]

A major source of dispute at trial was whether the primary purpose of the Cabinet meeting was to seek approval of the Directives (as the OPG claimed), or whether the meeting was intended to inform the Ministers about the progress of negotiations and to generate political support (as the defense claimed). In its judgment of conviction, the trial court resolved this dispute in favor of the OPG's account, concluding that Tymoshenko gave a copy of the Directives to Turchinov "to have them approved at the session of the Cabinet of Ministers of Ukraine on January 19, 2009."[180]

In so concluding, the court relied upon an official transcript of the January 19 meeting. The transcript lists two agenda items, the second of which is titled "Foreign Economic Activities of NAK Naftogaz of Ukraine."[181] Turchinov began the discussion at the meeting by stating that "[b]oth the Prime Minister and the Minister of Fuel and Energy have asked for your support of the directives—while they, too, unconditionally support them and vote for them."[182] Following Turchinov's description of the agreement,

---

179 Trial Transcript at 74 (Sept. 7, 2011) ("I did instruct Turchinov to convene a government meeting and to brief the Cabinet of Ministers of Ukraine on the concept of my negotiations with the Russians for the purpose of resolving the gas crisis. I left my guidelines with him, that is, my instructions, the ones I signed after my negotiations with the Russians . . . .").

180 Judgment in the Name of Ukraine at 4 (Oct. 11, 2011).

181 Cabinet of Ministers Transcript at 2 (Jan. 19, 2009).

182 *Id.* This phrasing was provided by the professional translation service that Skadden has relied upon for other translated documents in this Report. According to the OPG, the correct translation of

several ministers asked questions about its terms, and several made reference to specific language from the agreement, suggesting that they had a copy of its text.[183] Turchinov concluded the meeting by saying "This is just for your information. Basically, the guidelines don't have to be approved by the Cabinet of Ministers of Ukraine for the agreement to be signed."[184]

The trial court also considered a document entitled "Agenda of the Cabinet of Ministers Session" (the "Agenda"). This document, dated January 19, 2009, includes as a matter for discussion "Issues related to the foreign economic activities of the National JSC Naftogaz of Ukraine (*Cabinet of Ministers Decree draft*)."[185] Judge Kireyev cited the Agenda in his judgment, stating that it "contains evidence to the effect that it was planned at the session . . . to approve the Order . . . regarding Naftogaz of Ukraine foreign

---

Turchinov's statement is: "The Prime Minister and the Minister of Fuel and Energy requested, of course, voting for it, requested to support the Directives."

183 Turchinov told Skadden that "[t]he members of the Cabinet of Ministers did receive some papers but nothing related to the signing of a gas agreement with Russia." Turchinov Skadden Interview at 12 (June 13, 2012). He said he could not recall if any documents relating to the gas agreement were circulated at the meeting and stated that he did not prepare any documents or circulate them in anticipation of the Cabinet of Ministers meeting. *Id.* at 12-13. However, the transcript of the meeting makes clear that at least several of the members did have a copy of what purported to be the terms that Tymoshenko had negotiated and for which Turchinov sought support. *E.g.*, Cabinet of Ministers Transcript at 3 (Jan. 19, 2009) (V.M. Pynzenyk) ("It says here, the price formula, and then the direct political price of $450 is specified at the bottom."); *id.* at 5 (V.A. Hayduk) ("what is written here, that is, the base price of 450 reduced by 20 percent"); *id.* at 7 (Y. Yekhanurov) ("Here's what is written here, '. . . providing a discount of 20 percent from the base level, which is to be determined based on the results of agreements . . .'"); *id.* at 11 (I.V. Vasyunyk) ("Part one is written very well—I can quote, 'guaranteed supplies, stable and balanced deliveries . . . .'"). When asked about references in the transcript, Turchinov acknowledged that he did have a copy of the document, that Ministers Yekhanurov and Hayduk also had copies of the document, and that, in fact, "[t]he members who wanted to familiarize themselves with the document were given the document." Turchinov Skadden Interview at 15-16 (June 13, 2012).

184 Cabinet of Ministers Transcript at 24 (Jan. 19, 2009) ("For this reason, I don't think it will be necessary to adopt the guidelines now. Thank you for your assistance in conducting the negotiations, and I'm taking this issue off the agenda now. Good-bye." (emphasis omitted)).

185 Cabinet of Ministers Agenda at 1 (Jan. 19, 2009).

economic activities."[186] In his testimony, Turchinov disputed that the Agenda demonstrated an intention to seek formal approval from the Cabinet of Ministers:

> I note once again that on the Agenda there is no item concerning approval of the Directives by the Cabinet of Ministers of Ukraine. There was no objective like this for the Cabinet of Ministers of Ukraine.
>
> . . . the item regarding the Directives on 01.19.2009 was not included on the Agenda.[187]

The trial court also relied upon a single-page proposed order (the "Order") described in the trial court's judgment as "a draft order on approval of the Directives" that was presented at the January 19 Cabinet of Ministers meeting.[188] The Order is a single sheet of paper that bears Tymoshenko's name but not her signature.[189] The Court's judgment notes that the order "contains evidence to the effect that it was planned at the session . . . to approve by the Order . . . the Directives."[190] Turchinov disputed the authenticity of the Order:

> [T]here are no initials on the order. This is some kind of forgery.
>
> This Order had not been handed out at the session of the Government on 01.19.2009.[191]

Judge Kireyev's conclusion that the purpose of the meeting was to obtain the Cabinet's formal approval was also supported by testimony from Yuriy Yekhanurov, former Minister of Defense, who attended the meeting. At trial, Yekhanurov testified

---

186 Judgment in the Name of Ukraine at 30 (Oct. 11, 2011).

187 Trial Transcript at 9 (Aug. 11 2011).

188 Judgment in the Name of Ukraine at 10 (Oct. 11, 2011).

189 Cabinet of Ministers Order at 1 (Jan. 19, 2009).

190 Judgment in the Name of Ukraine at 30 (Oct. 11, 2011).

191 Trial Transcript at 9 (Aug. 11 2011).

that during the meeting, a draft resolution to approve the Directives was distributed.[192] When asked by the Judge how he understood Turchinov's request for support, he responded:

> Your Honor I cannot interpret words and legally assess them. It is my understanding that to "support" means "to vote."[193]

In response to vigorous questioning from Tymoshenko, Yekhanurov said:

> In this particular case it was an attempt to pass the Directives at the meeting of the government and to get them approved either by the decision or resolution of the government. . . . There was an attempt to do it![194]

Tymoshenko denied at trial that she intended to seek a formal vote in favor of the agreement. Instead, she says that she intended for Turchinov to advise the Cabinet of Ministers on the progress of her negotiations and to obtain their political support. She testified:

> I did instruct Turchinov to convene a government meeting and to brief the Cabinet of Ministers of Ukraine on the concept of my negotiations with the Russians for the purpose of resolving the gas crisis. I left my guidelines with him, that is, my instructions, the ones I signed after my negotiations with the Russians, and I instructed Turchinov to update the ministers on the current events and on my instructions in the form of guidelines and to listen to their opinions and advice. . . . He convened a government meeting and briefed the attendees on my guidelines that I had signed by that time, so the government did not have to approve anything—my instructions had already been signed. I said that I supported my own instructions and that Prodan supported my instructions in the form of guidelines and Turchinov was able to formulate it one way or another. I do not know how exactly he formulated it.[195]

---

[192] *Yulia Tymoshenko's Trial: Fight of Orange Prime Ministers*, UKRAINSKA PRAVDA, Aug. 3, 2011, http://www.pravda.com.ua/rus/articles/2011/08/3/6445032.

[193] *Id.*

[194] *Id.*

[195] Trial Transcript at 74 (Sept. 7, 2011).

Turchinov provided a similar account:

> I dialed the number of Mr. Petro M. Krupko, the Minister of the Cabinet of Ministers, and asked him to convene an extraordinary session of the Cabinet of Ministers for January 19th. . . . I informed in detail the members of the Government on the arduous negotiations, which [Tymoshenko] held and on those discounts she got, which would somehow allow us to maintain the energy stability in Ukraine.[196]
>
> I am the only person who can say what I wanted to do and what I did not want to do in the session of the Cabinet of Ministers of the 19th of January that was convened on my orders. I am the only person who can answer this question. On the instructions of the Prime Minister I was planning to inform the members of the Government on the progress of the negotiations in Moscow and the positive changes that the Prime Minister was able to achieve in the course of these negotiations; this is what I did—I informed the members of the Government.[197]

Krupko, the Minister of the Cabinet of Ministers, did not testify at trial (see Part IV.G, *infra*), but in his pretrial interview, which was introduced at trial, he agreed with Tymoshenko and Turchinov that formal approval was not sought:

> There was a political reason to call the extraordinary meeting of the [Cabinet of Ministers] on 19 January 2009. Due to the situation we were in after Russia stopped supplying natural gas to Ukraine and the (consequent) inability to transport it to European countries, there was an urgent need for the members of Government to be informed of the progress for negotiations in which [Tymoshenko], the Prime Minister of Ukraine, and the management of Naftogaz were taking part in, in Moscow. The Government had to remain united, since all Ministers, as members of the collegiate body, were jointly responsible (including politically responsible) for the current situation in the country.
>
> Therefore, the aim of the meeting was to inform all the members of the [Cabinet of Ministers], and to develop a unanimous and united approach to the issues of gas supply and its transit. At the time, any confrontation

---

196 Trial Transcript at 30 (Aug. 10, 2011).

197 Trial Transcript at 35-36 (Aug. 11, 2011). Turchinov told Skadden that Tymoshenko asked him to convene the meeting "to inform the government about the results of her negotiations and to get political support." Turchinov Skadden Interview at 11 (June 13, 2012). *See also id.* ("She told me to inform the members of the government about the Moscow negotiations. This was very important because she always worked publicly and transparently. She did not want anyone accusing her of not operating openly.").

> between the members of the Government on this matter would have been politically unacceptable.
>
> As a result, Mr Oleksandr V. Turchinov, who was presiding at the meeting of the Government, put the motion forward so that he could listen to all the various opinions and to develop the Government's unified position in regards to this matter.[198]

Krupko later told Skadden that the "unanimous and united approach" language was "a mistranslation," and that "I said general support but not to form a unified position."[199]

Another subject of dispute was whether the terms of the agreement met with support or opposition from the Ministers who attended the January 19 meeting. Judge Kireyev found that "the members of the Cabinet of Ministers of Ukraine refused to support the…Directives," and for this reason they "[were] not brought up for vote by" Turchinov.[200]

Turchinov, by contrast, claimed that the Members who attended the meeting supported the terms of the proposed agreement:

> No member of the Government spoke against the signing of the agreements on the terms agreed by the Prime Minister, nobody expressed an opinion that the agreements might not be signed, because everybody understood how dangerous the situation in Ukraine was and that there was no alternative to what the Prime Minister has done to save Ukraine.[201]
>
> [E]ven those Ministers who were appointed by President Yushchenko's quota, made no statement, expressed no disagreement regarding the

198 Krupko Pretrial Interview at 2 (Apr. 22, 2011); Krupko gave Skadden a similar account. *See* Krupko Skadden Interview at 1-2 (June 14, 2012) ("He called me at 9:30 or 10 AM on January 19th. Turchinov asked me—you know what type of government we have. It was a coalition government and very politically heterogeneous. That is why it was so important to inform them about the Moscow talks, and about the future terms and conditions of gas supply to Ukraine. Turchinov wanted to avoid quarrels in the government. So, I was to convene the government.").

199 Krupko Skadden Interview at 2 (June 14, 2012).

200 Judgment in the Name of Ukraine at 4-5 (Oct. 11, 2011).

201 Trial Transcript at 30 (Aug. 10, 2011).

> disagreement, improvement or worsening. It was very important that the Government, under these difficult conditions, remained one team.[202]
>
> In the sessions of the Government . . . nobody raised the issue of unacceptability of the agreements achieved. . . . I communicated with those who abstained from voting; this was the group from V.A. Yushchenko. They explained to me that they all were forced to vote against but nevertheless they just abstained from voting.[203]

The transcript indicates that, following Turchinov's description of the agreement, several ministers asked questions about its terms, including about the $450 price and 20 percent discount. A number of Turchinov's exchanges with the Ministers indicated confusion and disagreement about the pricing terms,[204] including one contentious exchange with Yekhanurov.[205] After declaring that the agreement was "written very badly," Yekhanurov stated:

> I would like to leave, with your permission, so that I don't say what I'm not supposed to say here. As a statesman, I promise I won't "rock the boat" or "stab" anyone in the back, the way I was stabbed in the back three years ago. Thank you.[206]

He then walked out of the meeting. Yekhanurov testified at trial that he knew upon reading the terms of the agreement that it was a bad deal for Ukraine, "[s]o I expressed

---

[202] *Id.* at 30-31. Turchinov told Skadden that "[t]he Cabinet of Ministers did express its support. No member of the government expressed a negative opinion." Turchinov Skadden Interview at 16 (June 13, 2012).

[203] Trial Transcript at 13 (Aug. 11, 2011).

[204] Cabinet of Ministers Transcript at 20 (Jan. 19, 2009) (I.O. Vakarchuk) ("Esteemed colleagues, I have a question: if we have 40, what we need, the 450 price, multiplied by 20 percent, equals 1.7, multiplied by all this, don't we have a compensation, is there any difference? Does anyone have any figures, whether we're going to lose or win?").

[205] The transcript describes part of the exchange between Yekhanurov and Turchinov as follows:

Yekhanurov:	"The remaining 30 billion are offered for $450—in other words, the actual gas price is plus 20 percent, that is, $540."
Turchinov:	"No, no, 450 minus 20 percent, Yuriy Ivanovych. You overlooked that."
Yekhanurov:	"450 including 20."
Turchinov:	"Minus 20 percent."

Id. at 7.

[206] *Id.* at 8.

my opinion and said that I would leave the meeting of the government and I would not speak to the media about it because negotiations were still ongoing."[207]

Turchinov concluded the meeting by saying he was "surprised by the discussion we have just had," and stating "I don't think it will be necessary to adopt the guidelines now. Thank you for your assistance in conducting the negotiations, and I'm taking this issue off the agenda now. Good-bye." [208]

Thus, no vote was taken at the end of the meeting. Turchinov testified that this fact was communicated to Tymoshenko and Prodan, who were then in Moscow:

> Yes, certainly, Yuriy Prodan was aware that the session took place and that I provided the information and the Directives were not approved. We communicated by phone and I informed both the Prime Minister and Yuriy Prodan as the Minister of Fuel and Energy.[209]

4. Tymoshenko Traveled to Moscow to Conclude the Agreement, but Dubyna Refused to Agree to the Terms She Had Negotiated

Tymoshenko and the Naftogaz delegation returned to Moscow on the afternoon of January 19. Judge Kireyev concluded that, when Dubyna was asked to sign an agreement

---

[207] *Yulia Tymoshenko's Trial: Fight of Orange Prime Ministers*, UKRAINSKA PRAVDA, Aug. 3, 2011, http://www.pravda.com.ua/rus/articles/2011/08/3/6445032. Yekhanurov told Skadden that he had a private conversation with Turchinov to express his displeasure at the agreement:

> Prior to the meeting beginning, I approached Turchinov in the meeting room to speak with him. I told him that I had reviewed the Directives and I thought the prices were bad, and not in the interest of Ukraine. I specifically asked him not to raise the motion to approve the Directives. I told Turchinov prior to the meeting that if he did raise that motion, I would vote against it.

Yekhanurov Skadden Interview at 5 (Apr. 18, 2012).

[208] Cabinet of Ministers Transcript at 24 (Jan. 19, 2009).

[209] Trial Transcript at 23 (Aug. 11, 2011). Turchinov similarly told Skadden that he reported to Tymoshenko on the meeting's outcome. Turchinov Skadden Interview at 16-17 (June 13, 2012) ("Q. And did you tell her that the Cabinet of Ministers supported the Directives? A. The case is that the Cabinet of Ministers did not support or not support the Directives. I told her that no member of the Cabinet of Ministers expressed a negative opinion about signing the agreement. I informed her that the Cabinet of Ministers wanted to use a formula. I also informed the Prime Minister that, according to the opinions of the members of the Cabinet of Ministers, there should be a link between gas price and transit price. That was the end of our conversation.").

with the terms that Tymoshenko had negotiated, he balked and told Tymoshenko "that he would refuse to sign a contract on such terms, because he considered them absolutely unacceptable, without a decision of the Government."[210] In response, Judge Kireyev found, Tymoshenko threatened to fire him.[211]

Judge Kireyev's findings are supported by Dubyna's testimony at trial, including his statement that "[ha]lf the Russian House of Government was present when I refused to sign the contract."[212] In a pretrial interview with Investigators, which was introduced at trial,[213] Dubyna explained that Tymoshenko "stated that if I did not sign the contract I would be fired."[214] Dubyna's testimony that he opposed the contract is corroborated by that of Didenko, who testified:

> Dubyna's position was that he, as a more experienced official than I, said that we would not sign any document without the respective guidelines.[215]

Mikhail Levinsky, Tymoshenko's Chief of Staff, testified that Dubyna "decided to play [it] safe and apparently he requested to have a written document on this issue."[216] However, Levinsky also testified that Dubyna "never said that he would not sign the

---

210 Judgment in the Name of Ukraine at 7 (Oct. 11, 2011).

211 *Id.*

212 Trial Transcript at 12 (July 29, 2011). Dubyna informed Skadden that he told Tymoshenko that the contract could not be signed because it had not yet been fully negotiated and its terms had not yet been agreed upon. Dubyna Skadden Interview at 4 (Apr. 18, 2012).

213 Trial Transcript at 12 (July 29, 2011).

214 Dubyna Pretrial Interview at 2 (May 18, 2011); *see also id.* (Dubyna "told [Tymoshenko] that he still wouldn't sign to which [Tymoshenko's] response was that if he didn't sign he would get fired."). Didenko told Skadden that he, himself, had also objected to the price. Didenko Skadden Interview at 1 (May 23, 2012).

215 Trial Transcript at 23 (July 29, 2011). Tymoshenko told Skadden that "Dubyna was getting conflicting commands from Yushchenko and from me. . . . But, Dubyna knew what was right, and so he asked for a document to protect him from the other side." Tymoshenko Skadden Interview at 8 (June 28, 2012).

216 Trial Transcript at 35 (Sept. 5, 2011); *id.* at 36 ("As a brave man he played safe with a paper . . . .").

agreements."[217] In her pretrial interview, which became part of the case record, Tymoshenko indicated that if Naftogaz officials "had failed to follow [her] instructions they would have been fired."[218]

5. Tymoshenko Wrote and Arranged for the Preparation of an Official-Looking Document, "the Directives," Which She Personally Approved

A key issue at trial was Tymoshenko's alleged preparation of "the Directives," an official-looking document that bore her signature and the seal of the Cabinet of Ministers. Judge Kireyev found that Tymoshenko "personally approved [the] Directives and affixed thereon the seal of the Cabinet of Ministers of Ukraine."[219]

Evidence supporting this conclusion includes a document that was introduced at trial, and that was identified as the Directives. The OPG has provided Skadden with a copy of the trial document, which is directed to the Naftogaz delegation "in negotiations with . . . Gazprom . . . to sign the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019."[220] The document contains instructions regarding gas prices, transit prices, and the purchase of stored gas.[221]

The document bears the signatures of Prime Minister Tymoshenko and Minister of Fuel and Energy Yuriy Prodan, as well as the seal of the Cabinet of Ministers of

---

217 Trial Transcript at 36 (Sept. 5, 2011).

218 Tymoshenko and Dubyna Joint Pretrial Interview at 6 (Apr. 20, 2011).

219 Judgment in the Name of Ukraine at 4 (Oct. 11, 2011).

220 The Directives at 1 (Jan. 19, 2009).

221 *Id.*

Ukraine.[222] Dubyna stated in a pretrial interview, which was read aloud at trial,[223] that the Directives bore the seal of Cabinet of Ministers and Tymoshenko's signature. The Investigator's memorandum described his interview testimony as follows:

> A few hours later, at approximately 5pm, in the Russian Government Building, [Tymoshenko] gave [Dubyna] a directive from the government (the "Directive") which was personally approved by [Tymoshenko], *i.e.* signed by her and stamped with a stamp of the [Cabinet of Ministers]. . . . [Dubyna] is sure that the Directives bore an original [Tymoshenko] signature on it (not a facsimile) and it also bore the blue seal of the [Cabinet of Ministers].[224]

Judge Kireyev also relied upon a forensic report concluding that Tymoshenko's signature on the document was an original.[225]

At trial, Tymoshenko denied that the document introduced by the OPG was an authentic copy of the document she had prepared:

> The document furnished to me during the pretrial investigation under the title of "Guidelines of the Prime Minister of Ukraine" dated January 19, 2009 was not signed by me. . . . I want to very clearly state now that the copy of the Guidelines that was provided to me for review and which is included in the case evidence, and which during the pretrial investigation the investigator identified as an original of the guidelines was not signed by me. . . . I cannot rule out that these guidelines now in the case evidence are not forged by the current regime.[226]

---

222 *Id.*

223 Trial Transcript at 12 (July 29, 2011).

224 Dubyna Pretrial Interview at 2 (Apr. 14, 2011). At a post-trial Skadden interview, Dubyna was asked why he perceived the order signed by Tymoshenko as being from Cabinet of Ministers. He explained: "I had worked as the first Vice Prime Minister. The paper was sealed with the seal of the Cabinet of Ministers, and had the Prime Minister's signature and bullet point instructions for me. . . . Tymoshenko is standing there; I am standing there. She passes the Directives to me. I read them. I ask, did the Cabinet adopt this? The word by word answer, I say Prodan, come here, and I say to him, sign it, on the reverse side, he puts his signature, I put it in the folder, I close, and I gave it to Didenko." Dubyna Skadden Interview at 4-5 (July 18, 2012).

225 Judgment in the Name of Ukraine at 41-42 (Oct. 11, 2011) (citing "Expert Report No. 3616/11-11/3617/11-13, dated April 20, 2011, which is admitted by the Court as proper evidence"). Skadden has not reviewed this report.

226 Trial Transcript at 24 (Sept. 7, 2011).

Similar testimony was provided by Mikhail Levinsky, one of Tymoshenko's assistants who had accompanied her to Moscow on January 19. Levinsky testified that the document presented at trial was unlike the standard form of instructions issued by the Prime Minister, which would have been initialed and would have contained a visa:

> The document is not prepared correctly; this is not the first copy, by the way. It is not initialed, there is no visa, and this is not an original. And secondly—there is no signature of the Prime Minister. Here is the seal of the Cabinet of Ministers, which certified the facsimile.[227]

Tymoshenko also questioned the OPG's claim that she had personally prepared and affixed the seal of the Cabinet of Ministers to the document:

> The state prosecution asserts, without ground and without providing any evidence, that I personally prepared and submitted an administrative document—guidelines of the Prime Minister of Ukraine to the Naftogaz delegation on negotiations with Gazprom JSC to individuals unidentified by the investigation to print, and also personally approved these guidelines and affixed the seal of the Cabinet of Ministers of Ukraine. This is all baseless and unsubstantiated. These claims are not based on any evidence.[228]

However, Tymoshenko also testified several times that she did prepare written "guidelines" for Prodan memorializing the results of her negotiations with Putin, which she signed:

> On several occasions, and during the pretrial investigation—including in court—I have stated that the guidelines that I signed are my instructions. I prepared my instructions in the form of guidelines . . . ."[229]

> I . . . formalized the outcome of the negotiations in the form [of] a particular document—my instructions in the form of "guidelines" . . . . I signed [them] personally in Moscow to accompany the guidelines.[230]

---

227 Trial Transcript at 23 (Sept. 5, 2011).

228 Trial Transcript at 23 (Sept. 7, 2011); *see also id.* at 24 ("According to the charges made . . . I personally placed the seal of the Cabinet of Ministers of Ukraine on said document. . . . This is totally outside of common sense.").

229 *Id.* at 10.

> [T]he document I issued to the Minister of Fuel and Energy in January 2009 under the title of "guidelines" . . . informed the Minister of Fuel and Energy of the results of my negotiations with the Prime Minister of Russia in the form of my instructions.[231]

It is unclear from her testimony whether, in Tymoshenko's view, these "guidelines" differed from the document introduced by the OPG. Notably, Tymoshenko testified that her "guidelines" bore her signature and the seal:

> The first copy bore my original signature with seal affixed. . . . Some words could have been rearranged and different emphasis added. I cannot at this point determine this, however, I did issue guidelines of corresponding content with my original signature.[232]

6. Tymoshenko Gave a Copy of the Directives to Dubyna and Falsely Informed Him that They Had Been Approved by the Cabinet of Ministers

Another main factual dispute at trial concerned whether Tymoshenko gave the Directives directly to Dubyna (as the OPG claims) or instead gave them to Prodan (as the defense claims). Judge Kireyev concluded that Tymoshenko gave them directly to Dubyna, "providing him with inaccurate information that the provisions of those Directives" had been approved by the Cabinet of Ministers.[233]

Supporting this conclusion is Dubyna's testimony, both before and at trial, that Tymoshenko handed him the Directives and that he then gave them to Prodan:

> I confirm the testimony provided during the pretrial investigation that Yulia V. Tymoshenko gave the instructions to me personally. . . . The instructions did not carry the signature of [Tymoshenko's Minister of Fuel and Energy, Yuriy] Prodan, he signed them and gave them to me. . . . I

---

230 *Id.* at 12-13.

231 Trial Transcript at 13 (Sept. 7, 2011). When asked by Skadden about the document that Dubyna requested, Tymoshenko said, "I wrote this document." Tymoshenko Skadden Interview at 8 (June 28, 2012).

232 Trial Transcript at 24 (Sept. 7, 2011).

233 Judgment in the Name of Ukraine at 5 (Oct. 11, 2011).

> happened to receive a folder with the documents which did not carry the signature of Yuriy Vasyliovych Prodan. Yuriy Vasyliovych was standing right there (there were four of us standing there), he signed them right there and gave them to me.[234]

Later, in response to questioning from Tymoshenko, Dubyna reiterated:

> Chronologically in that order: the folder with the documents from Yulia V. Tymoshenko was given to me, Yuriy V. Prodan received it from my own hands, signed and gave it back to me.[235]

The defense disputed this account, contending instead that Tymoshenko handed the Directives to Prodan, who signed them and then handed them to Dubyna. Thus Tymoshenko testified:

> On January 19, 2009, in the city of Kyiv, at the request of Oleh V. Dubyna, Chairman of the Board of Directors of Naftogaz, I gave specific instructions to the Minister of Fuel and Energy [Prodan] and, as an attachment to them, approved guidelines of the Prime Minister of Ukraine for the Naftogaz delegation at the negotiations with Gazprom JSC with respect to executing a natural gas purchase and sale contract for 2009-2019.[236]
>
> Prodan not only confirmed that I gave him the instructions, but asked the court to include my personally written instructions in the case. He confirmed that he received it. I confirmed that I issued such instructions. I confirmed my signature. Now we have Prodan's notarized statement that

---

[234] Trial Transcript at 14 (July 29, 2011). Dubyna stated in a pretrial interview that Tymoshenko "gave" him the Directives and that Prodan signed it "in [his] presence," but the precise chronology was not explained further. Dubyna Pretrial Interview at 2 (Apr. 14, 2011).

[235] Trial Transcript at 17 (July 29, 2011).

[236] Trial Transcript at 61 (Sept. 7, 2011). Tymoshenko told Skadden that Dubyna requested that she present him with a written document in order to give himself political cover:

> Dubyna was getting conflicting commands from Yushchenko and from me. . . . [H]e asked for a document to protect him from the other side. . . . I wrote this document. I designated the Minister of [Fuel and] Energy to sign the document. The publicly announced terms that I agreed upon with Putin were contained in the document.

Tymoshenko Skadden Interview at 8 (June 28, 2012). Tymoshenko's Chief of Staff told Skadden that Dubyna had the Directives drafted "to be secured from Yushchenko." Levinsky Skadden Interview at 19 (June 14, 2012). Tymoshenko's attorney told Skadden that Dubyna asked her to prepare a document memorializing the terms that she had negotiated with Putin. Vlasenko Skadden Interview at 5 (June 15, 2012) ("She said, 'I remember Dubyna asked me to prepare a document memorializing what I agreed on with Putin.'").

> it was in fact I who gave him the instructions and that the guidelines were attachments thereto.[237]

During the OPG's pretrial investigation, Prodan had stated that he could not remember who handed the document to Dubyna.[238] At trial, however, Prodan testified that Tymoshenko had handed it to him along with written instructions to forward it to Dubyna:

> The Prime Minister provided me with the Directives that were not prepared by me but were brought from Kyiv. When I was preparing for this meeting, I received the instruction from the Prime Minister accordingly to familiarize Naftogaz with these directives. I went through the Directives; all paragraphs of the Directives corresponded . . . to the agreements that were reached during the negotiations between the Prime Ministers of Ukraine and Russia, because all these points were discussed, thus, I endorsed these documents and handed them over to Dubyna . . . .[239]

Prodan testified that his recollection had been refreshed upon finding a copy of Tymoshenko's written instructions in his files.[240] Later in the trial, Turchinov claimed that Prodan had told him about having received the instructions directly from Tymoshenko.[241] Tymoshenko's account was also supported by Levinsky, who testified:

> Tymoshenko was in the room with a few people, I remember that there definitely was Prodan, definitely was Dubyna, and she asked me to give her the materials for our trip, and she took the instruction and then a document, which as I realized were the Directives. She showed it to Oleh V. Dubyna, he looked at it, then she gave it to Yuriy V. Prodan, he read it. I realized that this was the first time that he read them; he signed it, and gave to Dubyna. After that, it seems to me that Dubyna gave it to one of his assistants.[242]

---

[237] Trial Transcript at 13 (Sept. 7, 2011); *see also id.* at 28 ("I want to draw special attention to the fact that the instructions in the form of guidelines that I gave to the Minister of Fuel and Energy . . . .").

[238] Summary of Prodan Pretrial Interview at 2. Skadden was not given an original copy of Prodan's pretrial interview.

[239] Trial Transcript at 14 (July 27, 2011).

[240] *Id.* at 15-16 (July 27, 2011).

[241] Trial Transcript at 8 (Aug. 11 2011) ("I can confirm that the Directives were given to Prodan. First of all, I know it from Mr. Prodan himself . . . .").

[242] Trial Transcript at 13 (Sept. 5, 2011).

The parties also disputed what was said when the Directives were handed over. Judge Kireyev concluded that, when Tymoshenko gave Dubyna the Directives, she "provid[ed] him with inaccurate information that the provisions of those Directives" had been approved by the Cabinet of Ministers.[243] This conclusion is supported by Dubyna's pretrial testimony, which was read aloud at trial,[244] in which he stated that Tymoshenko assured him that the Directives had been ratified by the Cabinet:

> I asked [Tymoshenko] whether this Directive had been ratified by the government. She said, "Yes, ratified. On 19 January 2009 Mr. Turchinov and the [Cabinet of Ministers] voted in favor of this decision."[245]

At trial, Tymoshenko denied having told Dubyna that the Cabinet of Ministers had voted:

> I did not say to Dubyna that the resolution to execute a contract on such terms was passed by the January 19, 2009 government meeting. The government meeting was a public one and the documents were not for official use only or confidential. . . . . [A]ny claims that someone believed it was a government resolution are unfounded.[246]

7. In Reliance on the Directives, Dubyna signed the January 19, 2009 Agreement between Naftogaz and Gazprom

Following receipt of the Directives, Dubyna and his deputy, Didenko, signed the contracts. Judge Kireyev concluded that they did so based on their assumption "that the

---

[243] Judgment in the Name of Ukraine at 5 (Oct. 11, 2011).

[244] Trial Transcript at 12 (July 29, 2011).

[245] Dubyna Pretrial Interview at 3 (Apr. 14, 2011). In a post-trial interview with Skadden, Dubyna indicated that Tymoshenko's statement had been more equivocal: He asked whether the Cabinet of Ministers had "actually issued this directive," and Tymoshenko responded that "Turchinov is in the process of making a vote." Dubyna Skadden Interview at 4 (Apr. 18, 2012). Dubyna told Skadden that "[t]he Cabinet of Ministers meeting took place at 14:00 on January 19th and I was given the signed Directive at 16:00." *Id.* at 5. He stated his belief that Tymoshenko knew at the time she presented him with the Directives that the Cabinet had not approved it. *Id.* at 6 ("I do think that she knew at the time she gave me the Directives, that it had not been approved by the Cabinet of Ministers.").

[246] Trial Transcript at 75 (Sept. 7, 2011).

Directives approved by [Tymoshenko] are legally binding."[247] This conclusion is supported by Dubyna's Testimony:

> I took the guidelines as a document which must be implemented. Since it was then signed by a minister, I took it as an assignment to be performed.[248]

Dubyna also testified that he "perceived the order signed by Yulia V. Tymoshenko as that of the Cabinet of Ministers. This is my personal feeling."[249]

In a pretrial interview, which was read aloud at trial,[250] Dubyna stated that "had [he] known that the [Cabinet of Ministers] had not ratified this Directive, [he] would never have signed the contracts."[251] Later in the same interview, Dubyna is reported as stating that notwithstanding the Directives, he continued to object to the contract; he called President Yushchenko requesting to be relieved from the negotiations. According to Dubyna, Yushchenko responded that Tymoshenko had already informed him about the terms of the agreement; Yushchenko neither instructed Dubyna to sign or not to sign it. After that conversation, Dubyna claimed, he had no choice but to sign.[252]

---

[247] Judgment in the Name of Ukraine at 5 (Oct. 11, 2011).

[248] Trial Transcript at 12 (July 29, 2011). Didenko told Skadden that, after seeing the Directives, Dubyna told him that everything was "in order," which Didenko understood to mean that the Directives was legitimate. Didenko Interview at 1 (May 23, 2012). Following Tymoshenko's trial, Didenko stated publicly that he would not have signed the contract had he known that the Directives had not been adopted by the Cabinet of Ministers. *Former Naftogaz official says he believed Cabinet approved directives*, KYIV POST, Sept. 2, 2011, http://www.kyivpost.com/content/politics/former-naftogaz-official-says-he-believed-cabinet-.html.

[249] Trial Transcript at 17 (July 29, 2011).

[250] *Id.* at 12.

[251] Dubyna Pretrial Interview at 3 (Apr. 14, 2011). He added, however, that "had I not signed it, someone else would have, even in the absence of the Directives. It could be [Tymoshenko] herself, Prodan, or my deputy Didenko." *Id.*

[252] Dubyna Pretrial Interview at 3 (Apr. 14, 2011). Later in the same document, however, Dubyna denies having spoken to Yushchenko about the agreement:

8. By Issuing the Directives to Dubyna, Tymoshenko Acted in Excess of Her Legal Authority

The parties clashed at trial over the nature and legal effect of the Directives. Because these disputes largely turn on issues of Ukrainian law that are beyond our expertise and the scope of our assignment, we identify some of the most significant disputes here but do not attempt to resolve them.

(1) The first major legal dispute concerns the nature and purpose of the Directives. The OPG alleged, and Judge Kireyev found, that the Directives were represented to be binding orders issued on behalf of the Cabinet of Ministers.[253] Judge Kireyev largely rests this conclusion on Dubyna's testimony that they were presented to him as "a mandatory document from the Cabinet of Ministers of Ukraine."[254]

Tymoshenko strongly and repeatedly denies that the Directives were or purported to be an order of the Cabinet of Ministers, insisting instead that they represented the personal "instructions" of the Prime Minister.[255] As such, they did not impose "imperative legal" obligations, but merely memorialized the results of her negotiations with Putin for the benefit of the Naftogaz delegation.[256] She also argued that the Directives do not resemble an official act of the Cabinet of Ministers, but rather "contain[]

> I would like to note that I called President Yushchenko numerous times on 19 January 2009, however, he was not answering his phone. I managed to get through to the First Deputy Head of the President Secretariat, Mr. Shlapak. I explained the situation to Mr. Shlapak and asked him to put me through to Yushchenko. Mr. Shlapak said that the President was unable to answer my call.

Id. The document does not provide any explanation for or discussion of this disparity.

253 Judge Kireyev told Skadden that "the Prime Minister of Ukraine personally endorsed a document that needed to be endorsed by the entire Cabinet of Ministers. It's an obvious crime." Kireyev Skadden Interview at 4 (May 17, 2012).

254 Judgment in the Name of Ukraine at 7 (Oct. 11, 2011).

255 Trial Transcript at 61 (Sept. 7, 2011).

256 *Id.* at 37.

all necessary criteria to identify it as instructions of the Prime Minister of Ukraine."[257] During her questioning of Dubyna, she elicited his testimony that "No, this document [the Directives] does not resemble the instructions of the Ukrainian Cabinet of Ministers."[258]

(2) Another legal dispute relates to whether Tymoshenko was legally able to unilaterally approve the Directives. The OPG alleges that Tymoshenko's abuse of power was based in part on the fact that she independently took action—issuing the Directives—that could only have been taken by the Cabinet of Ministers collectively.[259] Judge Kireyev's judgment of conviction states that under Ukrainian law, Naftogaz "is an independent economic entity and that [Tymoshenko], as the Prime Minister of Ukraine, may not intervene in its activities and give orders in any form regarding making agreements in the course of business."[260] In a post-trial interview, Judge Kireyev told Skadden that if the Cabinet of Ministers had approved the agreement in advance, "[i]t would have been legal."[261]

Tymoshenko takes the contrary position that approval from the Cabinet of Ministers was not necessary. She points to supporting legal interpretations from three documents. At trial, the defense introduced a letter signed by Minister of Justice

---

[257] *Id.* at 25; *see also id.* ("Everything is there. There's the signature of the Prime Minister, the large stamp of the Cabinet of Ministers of Ukraine, which isn't placed on government decisions, but is placed over the signature of the Prime Minister. There's simply and clearly a report on the results of the negotiations. This document isn't a regulatory document—this is clear to any idiot, not just the prosecution.").

[258] Trial Transcript at 17 (July 29, 2011).

[259] Act of Indictment at 8.

[260] Judgment in the Name of Ukraine at 4 (Oct. 11, 2011).

[261] Kireyev Skadden Interview at 4 (July 18, 2012); *see* Kireyev Skadden Interview at 4 (May 17, 2012) ("We have many cases in Ukraine where village leaders sign something personally that has not been approved by the village council, and say that it is a directive of the village council.").

Oleksandr Lavrinovich concluding that the agreement was a contract between two commercial entities, Naftogaz and Gazprom, not an act of government or international agreement, and thus, no approval from the Cabinet of Ministers was required.[262] A similar letter, from former Deputy Prosecutor General Viktor Kudryavtsev, also concluded that the agreement between Naftogaz and Gazprom did not require a Cabinet of Ministers directive.[263] Additionally, pretrial and trial testimony was provided by Vladimir Nagrebelnyy, Deputy Director of the Koretsky Institute of State and Law, who gave his expert opinion that the Directives were not directives of government, the approval of which would be governed by the laws of Ukraine.[264] Nagrebelnyy's testimony confirmed the views expressed in a pretrial report issued on behalf of the Koretsky Institute.[265] In his Judgment of Conviction, the trial judge concluded that Nagrebelnyy's testimony at trial was inadmissible and could not be taken into consideration.[266]

---

262 Letter from Oleksandr Lavrinovich, Minister of Justice, to Valeriy Khoroshkovskiy, Head of Security Service of Ukraine (Apr. 17, 2011); *see also Tymoshenko's attorneys found documents for her defence*, UKRAINSKA PRAVDA, May 16, 2011, http://www.pravda.com.ua/rus/news/2011/05/16/6201727/.

263 Letter from Viktor Kudryavtsev, Deputy Prosecutor General, to Volodymyr Oliynyk, Member of Parliament of Ukraine; *see also Tymoshenko's attorneys found documents for her defence*, UKRAINSKA PRAVDA, May 16, 2011, http://www.pravda.com.ua/rus/news/2011/05/16/6201727/.

264 *See* Summary of Nagrebelnyy Pretrial Interview at 1 ("the report stated, and it was established, that the Directives for the delegation for the negotiations with Gazprom related to the foreign economic agreements, the Sale Purchase contract . . . and the contract on the volume and terms of the transit . . . cannot be qualified as the Directives of Government, approval of which is governed by laws of Ukraine."); *see also* Judgment in the Name of Ukraine at 42 (Oct. 11, 2011).

265 *See* Summary of Nagrebelnyy Pretrial Interview at 1-2.

266 Judge Kireyev found that "this testimony is not a witness testimony within the meaning of Sec. 68 of the [CPC] and cannot be taken into consideration by the Court." Judgment in the Name of Ukraine at 42 (Oct. 11, 2011). *See* Code of Criminal Procedure of Ukraine Art. 68 (Jan. 18, 2007) ("Every person who is known as being aware of circumstances related to the case may be summoned to appear as [a] witness. A witness may be questioned about circumstances to be established in a given case, inclusive of facts which characterize the personality of the accused or suspect and his/her relationship therewith. Information reported by a witness from [an] unknown source may not be evidence. If testimonies of a

(3) A third legal dispute concerns whether the Directives contradicted several laws, including an October 2001 agreement between the Cabinet of Ministers and the Russian Government; February and October 2008 Decrees issued by President Yushchenko and adopted by the Ukrainian Cabinet of Ministers; and an October 2008 agreement between the Cabinet of Ministers and the Russian Government. The OPG's theory was that these laws required the purchase price of natural gas paid by Naftogaz to be "pegged" to the transit price that Naftogaz charges Gazprom to transport Russian gas across Ukraine to Europe, such that an increase in one must be accompanied by an increase in the other. According to the OPG, Tymoshenko's Directives violated these laws by approving an increase in the purchase price while leaving the transit price unchanged. The defense argues that nothing in the Directives contradicts any of these laws.

Judge Kireyev found that the Directives that Tymoshenko authorized specifically violated the 2001 agreement by setting a fixed price of $1.7 for transit during 2009, without consideration for the price Gazprom charged for Ukraine's gas.[267] Judge Kireyev repeatedly noted that Law No. 2797-III was "an integral part of the Ukrainian legislation."[268] In concluding that the January 19 gas purchase agreement violates Law No. 2797-III, his opinion repeatedly cites the Interim and General Reports,[269] as well as the pretrial and trial testimony of the members of the commission audit working group,

witness are based on communications by other individuals, such individuals should [also] be questioned . . . .").

267 Judgment in the Name of Ukraine at 2, 5 (Oct. 11, 2011).

268 *Id.* at 5.

269 *See, e.g., id.* at 14.

but the opinion does not quote the provision that he believes the January 19 agreement violates.[270] When Skadden asked members of the OPG to identify the relevant provision, they pointed to a provision that states "[v]olumes of the transit of Russian natural gas through the territory of Ukraine and amount of payments in monetary form and/or volumes of gas supply as in the form of payment for transit will be clarified based on annual inter-governmental protocols for the relevant year."[271]

Members of the OPG informed Skadden that the tying provision was not located in the 2001 Agreement, but rather in one of the 2008 Presidential Decrees issued by then-President Yushchenko and adopted by the Cabinet of Ministers.[272] They pointed to a provision in the October 2008 Presidential Decree stating that the parties "insist on holding the position with respect to . . . transition to the formation of a transparent forecasted price supplied to Ukraine from Russian Federation territory, and to the formation of tariffs on natural gas transit and storage within Ukrainian territory, including the need for reciprocal matching of natural gas prices and tariffs on natural gas transit and storage."[273] The OPG claims that Tymoshenko's Directives violated a tying requirement imposed by this provision. The defense disputes that there is any inconsistency between this provision and the January 19 agreement, pointing to a letter from the Minister of

---

270 *Id.* at 13-18.

271 Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on Additional Measures for the Provision of Gas Transit from Russia through the Territory of Ukraine (Oct. 4, 2011).

272 Mikitenko et al. Skadden Interview at 2 (July 19, 2012).

273 Presidential Order, Negotiating Guidelines during the Working Visit of the Prime Minister of Ukraine to the Russian Federation (Oct. 1, 2008). Judge Kireyev's opinion states that this Decree "intended to establish predictable and transparent price of the natural gas delivered to Ukraine from the territory of the Russian Federation, as well as establish tariffs for transit and storage of the natural gas in the territory of Ukraine, including the need of mutual agreement of the natural gas prices and the tariffs for its transit and storage." Judgment in the Name of Ukraine at 35 (Oct. 11, 2011).

Justice stating that the Naftogaz-Gazprom contracts "are not in contradictions with the provisions of" the 2008 Decree.[274]

9. Tymoshenko's Actions Caused Grave Damage to Ukraine

A central dispute was whether the signing of the January 19 agreement inflicted damages on Ukraine in 2009. The OPG's theory of damages is that Tymoshenko's actions caused the price of gas to increase from its 2008 price of $179.50/kcm to a 2009 price of $232.98/kcm (an increase of $53.48/kcm), while the transit price remained unchanged at $1.7. The OPG states that in 2009, Naftogaz used 3.639 billion cubic meters of gas for "technical purposes," meaning this gas was consumed in aid of transiting Russian gas across Ukraine to Europe.[275] The damages were calculated by multiplying the increase in price by the amount of so-called "technical gas" consumed. The resulting figure, according to the OPG, represents the excess that Naftogaz paid under 2009 prices, as compared to 2008 prices, in order to pump Russian gas across Ukraine to Europe. Tymoshenko was charged only with losses relating to 2009.[276]

The trial court based its damages findings primarily on the results of a commission audit performed by the Main Supervision and Auditing Administration of Ukraine, entitled "On Conduct of the Commission Review of Certain Aspects of

---

274 Letter from Oleksandr Lavrinovich, Minister of Justice, to Valeriy Khoroshkovskiy, Head of Security Service of Ukraine at 5 (Apr. 17, 2011).

275 Skadden was told that the prosecutors chose to limit and to focus their calculation of damages on the cost of "technical gas" because such gas was the only gas that Naftogaz purchased from Russia for its own use. *See* Borodin Skadden Interview at 2-3 (July 19, 2012).

276 Skadden has received conflicting information regarding why the Government sought only to establish losses for 2009. One explanation is that the Directives contained instructions pertaining to the transit price only for 2009. Brief Information about losses inflicted to NJSC "Naftogaz of Ukraine" as a result of performance of the contracts of purchase and sale and for transit of Russian natural gas for the period from 2009 to 2019 at 3 (document provided to Skadden by the OPG). Another explanation was that, at the time of trial, only the 2009 figures had been established with the concreteness necessary for proof of criminal wrongdoing. Mikitenko et al. Skadden Interview at 4 (July 19, 2012).

Financial and Business Activities of Public Joint Stock Partnership (PJSP) National Joint Stock Company Naftogaz of Ukraine for the period from January 1, 2008, to December 31, 2010."[277] The audit resulted both in an Interim Report dated April 11, 2011, and in a General Report dated May 5, 2011.[278] The judgment cites these Reports for the proposition that, "as a result of conclusion of the natural gas purchase and sale contract and the transit contract between Gazprom JSC and Naftogaz . . . on January 19, 2009," the price of technical gas in Ukraine "has increased by $53.48 (by 29.8%) per 1,000 cubic meters."[279] Judge Kireyev thus concluded that Tymoshenko's actions "resulted in grave consequences for the state as represented by [Naftogaz] in terms of increased purchase costs of 3.639 billion cubic meters of imported natural gas for production and technological needs by the amount of $194,625,386.70, or UAH 1,516,365,234.94."[280]

The commission audit report was reviewed by Naftogaz[281] and by the Kyiv Research Institute for Legal Expertise, which confirmed the auditors' findings in two reports.[282] The Kyiv Research Institute stated that the January 19, 2009 contract "resulted in the increase of payment for 1,000 cubic meters of natural gas by $53.48, while the transit tariff remained the same in 2009 as in 2008 at $1.7 per 1,000 cubic meters per 100

---

277 Judgment in the Name of Ukraine at 13 (Oct. 11, 2011).

278 *See, e.g.*, *id.* at 14.

279 *Id.* at 13.

280 *Id.* at 5.

281 *Id.*at 14.

282 Report No. 3573/11-19, Kyiv Research Inst. for Legal Expertise (Apr. 21, 2011); Report No. 4049/11-19, Kyiv Research Inst. for Legal Expertise (May 12, 2011).

km . . . which led to losses" of $194,625,386.70 or $1,516,365,234.94 UAH.[283] The trial court judgment also cited, without further discussion, the testimony of five witnesses who participated in the working group's audit and one witness involved in Naftogaz's review of the audit, confirming the findings identified in the Reports.[284] The trial court judgment did not analyze the methodology employed by the commission audit team.

Tymoshenko and her defense team argued that the evidence regarding damages was sufficiently flawed as to prevent a finding that Tymoshenko's actions had caused damages, as is required in order to find a defendant guilty of the crime of abuse of power.[285] They advanced a number of arguments along these lines during the trial, which were uniformly rejected by the trial court.[286]

a. Losses vs. Lost Profits

The defense argues that damages were not established because of the "absence of losses for Naftogaz in 2009."[287] The defense argued that Naftogaz turned a profit in 2009, and that the profits received for its transit services actually increased from the prior year. The defense points to a document from the case file, a Policy Paper to the Report on the Financial Plan of Naftogaz in 2009, which found that "as compared to last year's period and targets, the gross profit from [providing transit services] in 2009 increased. The

---

283 Report No. 4049/11-19, Kyiv Research Inst. for Legal Expertise at 19 (May 12, 2011).

284 Judgment in the Name of Ukraine at 13-18 (Oct. 11, 2011).

285 ". . . where it *caused any substantial damage* to the legally protected rights and interests of individual citizens, or state and public interests, or interests of legal entities . . . ." Criminal Code of Ukraine Art. 365(1) (Sept. 1, 2001) (emphasis added).

286 The defense also tried to exclude the Interim and General Reports of the commission audit, which appear to be the central pieces of evidence relating to damages, on evidentiary grounds, claiming that the review was conducted by unknown individuals, but the trial court determined that this argument was defeated by the trial testimony of five witnesses who participated in the audit. Judgment in the Name of Ukraine at 32, 34 (Oct. 11, 2011).

287 *Id.* at 46.

gross profit from the provision of transit in 2009 was $4.2 billion," which was "$2.5 billion more than in 2008."[288] Judge Kireyev found that this claim was rebutted by, in particular, the Interim Report, the General Report, and the May 12, 2011 Kyiv Research Institute for Legal Expertise Report confirming the findings in those documents that there was "loss of assets and financial damages to Naftogaz."[289] The trial court did not, however, elaborate on the nature of these losses. The defense argued that the absence of damages was demonstrated by the fact that Naftogaz's expenses relating to gas transit in 2009 were, in fact, significantly lower than they were in 2008. The trial court rejected this argument as well, citing the Reports for the fact that this overall decrease was attributable to a decrease in the volume of gas transmitted in 2009 as compared to 2008, which decrease was greater than the increase in expenses for transportation caused by the pricing set in the January 19, 2009 contract.[290]

The court appears, therefore, to have found that if the transit price was not set at $1.7, Naftogaz's expenses associated with gas transit would have been even lower, resulting in an improved balance sheet position for Naftogaz in 2009, and that this caused Naftogaz damage. This seems to be a "lost profits" theory of loss. Testimony offered during trial to support the notion of lost profits included testimony from a Deputy Director within the Ministry of Energy and Coal, who stated that he "cannot confirm the language of 'loss' and should like to have it changed to 'excessive spending.'"[291] A Naftogaz employee also testified to this effect, noting that "[i]n this case, the calculations

---

288 Defense Arguments re: Damages at 7 (document provided to Skadden by Tymoshenko's attorney).

289 Judgment in the Name of Ukraine at 46 (Oct. 11, 2011).

290 *Id.* at 47.

291 Defense Arguments re: Damages at 2 (citing Trial Testimony of K. Borodin).

implied an increase in expenses for gas purchases by UkrTransGaz . . . In the Report, it figured as additional expenses; however, it was characterized as loss by the respective experts. The experts took expenses to be lost profit."[292] The May 12, 2011 Report from the Kyiv Research Institute for Legal Expertise states that under Ukrainian regulations:

> . . . material damages (losses) are losses of assets, and *loss of assets is the irrevocable decrease of assets due to, without limitation, transfer/payment of expenditures*. The extent of material damages (losses) is the *value of lost assets or lost revenues*, based on accounting records and financial performance reports of the involved entity, or expert opinion or other legally recognized methods.[293]

b. Absence of Causal Links

The defense claims that a causal relationship between Tymoshenko's actions and the infliction of damages has not been established, including because Dubyna and Didenko were under no compulsion to sign an agreement that contained the terms she had negotiated.[294] The trial court found that "the entire body of evidence investigated by the Court" established a causal relationship between Tymoshenko's actions in issuing and approving the Directives and the losses caused by the increased gas price and fixed transit price as set in the January 19, 2009 contracts.[295] Judge Kireyev stated that the losses "occurred exclusively due to the unlawful actions of Yulia V. Tymoshenko, acting alone."[296]

---

[292] *Id.* (citing Trial Testimony of Y. Dykovytsky).

[293] Report No. 4049/11-19, Kyiv Research Inst. for Legal Expertise at 10 (May 12, 2011) (emphasis added) (citing Joint Decree No. 346/1025/685/53 of the Main Auditing and Inspection Administration of Ukraine, Ukrainian Ministry of Interior Affairs, the Ukrainian Security Agency, and the Office of the Prosecutor General of Ukraine (Oct. 19, 2006)).

[294] Trial Transcript at 36-40 (Sept. 7, 2011).

[295] Judgment in the Name of Ukraine at 46 (Oct. 11, 2011).

[296] *Id.*

The defense notes that the court does not specify what documents constitute the body of evidence as cited for this proposition. In finding causation, the trial court apparently relies on the same testimony and evidence that it relied upon in finding that Tymoshenko unilaterally approved the Directives and therefore caused the signing of the January 19 agreements. In finding that Tymoshenko unilaterally approved the Directives, for example, Judge Kireyev cited the testimony of those present during the January 19, 2009 meetings in Moscow (including Dubyna, Didenko, Marchenko, and Prodan), as well as a number of the Ministers present during the emergency session of the January 19, 2009 Cabinet of Ministers (including Yekhanurov, Vinskyy, Vakarchuk, Ohryzko, Pavlenko, Shandra, Novitskyi, Kuybida, and Onishchuk). He also noted that he expressly discredited the testimony of Turchinov and Levinsky, who reported directly to Tymoshenko during the events at issue and during trial.[297]

c. Challenges to Methodology

The defense has also claimed that the methodology used to determine damages was flawed, noting in particular that calculations were improperly based on comparisons between 2008 and 2009 prices, rather than on comparisons between the 2009 prices as agreed upon and the alternative prices being seriously considered during late 2008 and early 2009. For instance, a price of $235/kcm was discussed in late December, and the Russians were demanding prices as high as $500/kcm in early January. The defense argues that the actual 2009 price, $232.98/kcm, was cheap by comparison. The defense has also pointed out that the methodology does not account for market forces or any other

[297] *Id.* at 40, 42.

factors that may have affected the price of gas between 2008 and 2009,[298] nor does it take account of the fact that gas prices had increased annually for several years before 2009.[299]

The prosecution has confirmed that its theory of damages does not depend on alternative agreements that might have been reached in January 2009 if Tymoshenko had not issued the Directives.[300] The prosecution has stated that the prices agreed upon on January 19, 2009 were not compared to the prices that were negotiated by Dubyna and Miller in late December 2008 because "[n]o official information concerning terms of agreement, of 31.12.2008, was received by Ukraine from Russia. Therefore, there was nothing that the terms of contracts, dated 19.01.2009, could be compared with."[301] Judge Kireyev adopted a similar view. He told Skadden that, because Tymoshenko unilaterally approved the Directives containing the fixed transit price without approval from the Cabinet of Ministers, this made her responsible for any resulting costs.[302] Judge Kireyev told Skadden that "[i]f the Cabinet of Ministers had voted for the Directives, it would be just a legal increase of prices; had Turchinov not removed the issue from the agenda, it would have been a legal increase in prices, and our country would have had to put up with it."[303]

---

298 Defense Arguments re: Damages at 1.

299 Trial Transcript at 41 (Sept. 7, 2011).

300 Mikitenko and Shorin Skadden Interview at 2-3 (June 27, 2012).

301 OPG Responses to Questions from Skadden at 1 (document provided to Skadden by the OPG).

302 Kireyev Skadden Interview at 6 (July 18, 2012); *see also* Mikitenko et al. Skadden Interview at 13-14 (July 19, 2012).

303 Kireyev Skadden Interview at 6 (July 18, 2012).

d. Failure to Prove Actual Losses Relating to Technical Gas

The defense also maintains that, even if the court was proceeding under a lost profits theory of damages, there were no actual lost profits to be assessed because the technical gas that was used was not Russian gas purchased at the price set under the January 19, 2009 contract, but rather stored gas from RosUkrEnergo purchased at a steep discount. The defense notes that Gazprom agreed to sell approximately 11 bcm of this stored gas to Naftogaz at a price of $153.9/kcm, far below the average 2009 price of $232.98/kcm. At trial, Tymoshenko pointed to Naftogaz accounting records that, she claimed, show that only this cheaply purchased stored gas was used for technical purposes.[304]

In a post-trial interview, Dubyna told Skadden that the gas used for technical purposes in 2009 was the RosUkrEnergo gas purchased at a steep discount, stating that "I directed that only the RosUkrEnergo gas—at $154—could be taken for technical needs."[305] He confirmed that technical gas in 2009 was therefore approximately $25 less expensive per 1,000 cubic meters than in 2008.[306] Dubyna thus concluded that "[n]o damage was made. I can prove it with numbers."[307] It does not appear that Dubyna testified regarding damages during trial, though he did note that "Naftogaz sells gas from its own balance to cover all expenses for UkrTransGaz at the price it sets on its own."[308]

---

304 Trial Transcript at 45-46 (Sept. 7, 2011).

305 Dubyna Skadden Interview at 5 (July 18, 2012). Under the 2009 contract, Naftogaz in 2009 received 11 billion cubic meters of gas in exchange for $1.7 billion, as repayment of RosUkrEnergo's debt. The price of this gas was therefore approximately $154 per 1,000 cubic meters.

306 *Id.*

307 *Id.*

308 Trial Transcript at 13 (July 29, 2011).

Didenko also testified during trial as to the separation of differently sourced gas under Ukrainian Cabinet of Ministers Order No. 1927 at the time the technical gas supply contract between UkrTransGaz and Naftogaz was signed, stating that "[m]ost probably, *remains of transitional gas of 2007, purchased by UkrGazEnergo at $95*, were stored in 2008 in the repositories of Naftogaz."[309]

The OPG offers two responses. First, the OPG claims that the gas used for technical purposes in 2009 was in fact purchased at a higher price under the January 19 agreement.[310] The OPG claims that the April 11, 2011 Interim Report titled "On Conduct of the Commission Review of Certain Aspects of Financial and Business Activities of Public Joint Stock Partnership (PJSP) National Joint Stock Company Naftogaz of Ukraine for the period from January 1, 2008, to December 31, 2010" explicitly so found. Second, the OPG claims that the RosUkrEnergo gas purchased at a steep discount was obtained illegally, and that Ukraine was later ordered by the Arbitration Institute of the Stockholm Chamber of Commerce to return it.[311] Therefore, the OPG's position is that the discounted RosUkrEnergo gas cannot be factored into the price paid by Naftogaz for use of technical gas in 2009.[312]

e. Failure to Mitigate Damages

The defense has also questioned why the prosecution and the court did not compare the price of the purchase of the gas and its subsequent selling price. The defense argues that Naftogaz should have negotiated a more advantageous contract with

---

309 Trial Transcript at 25 (July 29, 2011) (emphasis added).

310 Mikitenko et al. Skadden Interview at 6-8, 11-14 (July 19, 2012).

311 *Id.* at 7; *see also Stockholm arbitration rules in favor of RosUkrEnergo*, KYIV POST, June 9, 2010, http://www.kyivpost.com/content/ukraine/stockholm-arbitration-rules-in-favor-of-rosukrener.html.

312 Mikitenko et al. Skadden Interview at 6-7 (July 19, 2012).

its daughter company, UkrTransGaz, to which Naftogaz sells the gas it obtains from Gazprom. This argument appears to be a "mitigation" theory, under which a person who claims losses as a result of another's misconduct has a duty under the law to "mitigate" those losses by taking advantage of any reasonable opportunity under the circumstances to reduce or minimize the loss.[313]

The OPG responds that any internal arrangements between Naftogaz and its wholly owned subsidiary are irrelevant to the damages calculation. Moreover, it appears that the contract between Naftogaz and UkrTransGaz was negotiated in December 2008, before the January 19, 2009 contract was signed, and therefore Naftogaz may not have had an opportunity to mitigate its losses as to technical gas.

---

313 *See, e.g.*, 26 Am. Jur. Proof of Facts 3d 119 § 26 ("As with contractual causes of action, the plaintiff seeking lost profits in a tortious context has the duty to mitigate its damages"); Restatement 2d of Torts § 918 (1979).

IV. Due Process Issues

In this report, we consider eight major due process claims raised by Tymoshenko. She claims that:

(A) She lacked an adequate opportunity to prepare her defense.

(B) The judge presiding over her trial was not selected fairly and was not impartial.

(C) She was improperly denied a jury trial.

(D) Her removal from the courtroom during the trial was improper.

(E) She was improperly jailed during her trial, before her conviction.

(F) She was denied an adequate opportunity for representation during her trial.

(G) She was denied an adequate opportunity to present her defense.

(H) Her prosecution was an impermissible selective prosecution.

Tymoshenko has made many of these claims in an application filed with the European Court of Human Rights ("ECtHR") on August 10, 2011.[314] We will discuss each claim in turn.

A. Opportunity to Prepare a Defense

Tymoshenko raises concerns about the opportunity she and her attorneys had to prepare adequately for her defense. She contends that she and her attorneys were given insufficient time prior to trial to review the case file, which was voluminous, and to conduct pretrial investigations and other preparations.

[314] Tymoshenko Application.

1. Factual and Legal Background

a. Access to the Investigative File

Under Ukrainian criminal law, pretrial investigation is conducted by an Investigator (in this case, a member of the OPG), who interviews witnesses and compiles evidence regarding the accused's guilt. Upon completion of the investigation, the Investigator gives the accused access to her case file and records:

> Having found collected proofs sufficient as to indictment . . . [the] investigator is required to announce to the accused that investigation in his/her case has been completed and he/she has the right to review all records of the case personally and with assistance of a defense counsel and may file petition to supplement records of pretrial investigation. . . . If a defense counsel is involved in the case, [the] investigator gives him/her the possibility to review all records of the case [] and draws up an appropriate record thereon. In such a case, producing records of the case should be postponed till defense counsel's appearance but not more than for three days. . . .The accused and his/her defense counsel may not be limited in time they need to review all records of the case.[315]

Tymoshenko was indicted on April 27, 2011, and served with the final version of the charge against her on May 24.[316] The pretrial investigation was officially completed the next day, on May 25, and she was advised at that time that she could have access to the case file.[317] The file comprised approximately 14 volumes and 4,000 pages.

The prosecution claims that Tymoshenko's defense team was given adequate opportunity to review the case file. The prosecution's version of events is as follows: on May 26, 27, and 30, 2011, Tymoshenko's defense counsel, Sergiy V. Vlasenko, copied ten of the 14

[315] CPC Art. 218; Tymoshenko Application at p. 21.

[316] Report of R.R. Kuzmin, First Deputy General Prosecutor of Ukraine, to E.A. Kotets, Junior Counselor of Justice at 1 (June 6, 2011).

[317] Tymoshenko Application at ¶ 11.

volumes of her file.[318] During this period, Alexander Nechvoglod, the senior investigator assigned to her case, offered Vlasenko assistance with copying the remaining four volumes.[319] Vlasenko refused the offer, stating he would copy the volumes the following day.[320] On June 6, Nechvoglod copied the remaining four volumes and offered them to Vlasenko in exchange for his signature confirming receipt of the entire case file.[321] Vlasenko, however, refused Nechvoglod's offer, explaining that he and his client were occupied reviewing the other case file volumes.[322]

The defense maintains that Vlasenko was not given an adequate opportunity to review or copy the file. In addition, the defense maintains that the ability to prepare during this period was significantly undermined by the fact that Tymoshenko was regularly being called to the OPG for questioning on two unrelated criminal cases that had been opened against her (and that did not result in charges).[323] The OPG maintains that Tymoshenko had full access to the case file during the trial itself, and the defense has raised no issue regarding access to the file during the trial period.

b. Defense Request for Additional Investigation

After being presented with the case file, the defense is given an opportunity to request that the Investigator conduct supplementary investigations:

---

318 Report of R.R. Kuzmin, First Deputy General Prosecutor of Ukraine, to E.A. Kotets, Junior Counselor of Justice at 1 (June 6, 2011).

319 *Id.*

320 *Id.*

321 This exchange was performed in the presence of Kotets, Ukraine Junior Counselor of Justice. *Id.*

322 *Id.*

323 Tymoshenko Application at ¶ 11; Briefing on the Chronology of the Criminal Case against Yulia Tymoshenko in the Pretrial and Trial Stages at 1-2.

> The accused and his/her defense counsel may file verbal or written petitions for supplementing pretrial investigation, altering crime description, and dismissing the case. . . . [The] Investigator is required to satisfy petitions of the accused and his/her defense counsel if circumstances to be established upon [the] petition filed have an importance for the case.[324]

Once all the investigation—including supplemental investigation—has been completed, the Investigator prepares an Indictment, which describes the circumstances of the case and the substance of the charges.[325] The Indictment is forwarded to the prosecutor,[326] who verifies the details of the case and decides whether to reject, approve, or redraft the Indictment.[327] Once the Indictment is approved, the prosecutor then refers the case "to the court having jurisdiction thereof."[328]

According to the defense, Tymoshenko and her counsel gave notice to Nechvoglod on June 16, 2011, that they intended to submit more than 50 requests for further pretrial investigation actions, including the examination of defense witnesses.[329]

---

[324] CPC Art. 221.

[325] *Id.* at Art. 223.

[326] *Id.* at Art. 225.

[327] *Id.* at Arts. 228-230.

[328] *Id.* at Art. 232.

[329] Tymoshenko Application at ¶ 146; The Motion to Summon Witnesses requested persons "who attended the Cabinet of Ministers of Ukraine sessions, held on January 19, 2009, and January 21, 2009, in order to confirm the circumstances, in which the session of the Government was conducted on January 19, 2009, as well as the issues, which were discussed at that session, including the discussion of arrangements reached between the Prime Ministers of Ukraine and the Russian Federation in Moscow," persons with knowledge "regarding the situation, which emerged in the gas transportation system by the beginning of 2009 and which preceded the signing of Contracts No. KP and No. KTHU, dated January 19, 2009," and persons with knowledge "regarding the financial situation, conducting the audits and the business activities of NJSC Naftogaz of Ukraine 2008-2009." Motion to Summon Witnesses at 1-2 (document provided to Skadden by Tymoshenko's attorney). The Motion specifically listed the following witnesses: Grigory Mykhaylovych Nemirya; Petro Mykolayovych Krupko; Lyudmyla Leontiyivna Denysova; Yuriy Vitaliyovych Lutsenko; Ihor Ivanovych Umansky; Viktor Ivanovych Poltavets; Ivan Vasylyovch Vasyunyk; Vadim Anatoliyovych Frolov; Mykhaylo Viltorovych Becker; Myroslav Petrovych Khymko; Mykola Ivanovych Honcharuk; and Tetyana Henadiyivna Aldarkina. *Id.*

The prosecution states that it was known to all parties that June 16 was the final day before the official transfer from the investigator to the court, bringing an end to preliminary proceedings and related motion practice.[330] The prosecution further maintains that Vlasenko submitted Tymoshenko's actual pretrial investigation requests to the investigator on June 17, the day of transfer to the Pechersky District Court for trial (and the day after the deadline for submission). The investigator subsequently dismissed the defense requests for investigation on the ground that time had expired for their timely submission.[331]

Vlasenko maintains that upon telephoning Nechvoglod at about 5:00 p.m. on June 16, he was told that Nechvoglod was not in his office and would not return for the rest of the day. Vlasenko therefore mailed the requests on June 16, the final day on which such requests could be submitted, in order to comply with the deadline.[332] According to Vlasenko, however, Nechvoglod did not consider these requests, in violation of Tymoshenko's right to request supplemental investigation prior to the Indictment. Instead, Vlasenko was told that the case and the Indictment had already been submitted to the Pechersky District Court at 9:00 a.m. on June 17. Vlasenko further argues that the speed with which the charges were submitted to the Court—early on the morning following the close of the investigation—shows that the OPG failed to verify the details of the case, as required by the Code of Criminal Procedure of Ukraine ("CPC").[333]

330 Mikitenko and Shorin Skadden Interview at 9 (June 27, 2012).

331 *Id.*; Tymoshenko Application at ¶¶ 12-13.

332 Defense Arguments re: June 16th Petitions to Investigators & Passing of the Case to the Court at 1 (document provided to Skadden by Tymoshenko's attorney). Whether this document was submitted to the Court is unconfirmed.

333 *Id.*

On June 20, 2011, the OPG received 48 additional motions submitted by Tymoshenko and her counsel, including a motion to investigate and call as witnesses those individuals who participated in the audit of the different aspects of the financial-commercial activities of Naftogaz.[334] Tymoshenko also sought to examine experts responsible for the legal and economic conclusions relied upon in her case, and requested face-to-face meetings with Dubyna and other witnesses.[335] According to the prosecutors because the motions were submitted after the case had already gone to the Court, the OPG had no legal right to consider, and ultimately did not consider, these motions on their merits.[336]

c. Trial Date and Defense Requests for Additional Time

Court proceedings against Tymoshenko began on June 24, and the full, official indictment was presented to her on June 29.[337] That same day, Tymoshenko petitioned for a three-day adjournment to review the indictment and a three-week adjournment to review the case file.[338] The Court notified her that her petitions were untimely, but declared a break until July 4 to afford Tymoshenko and her counsel an opportunity to familiarize themselves with the indictment pursuant to Article 286 of the CPC.[339]

---

[334] Consideration of the Motions Submitted by Y.V. Tymoshenko and Her Defense Lawyers in the Criminal Case No. 49-3151 at 2.

[335] *Id.* at 3.

[336] Mikitenko and Shorin Skadden Interview at 9 (June 27, 2012); Consideration of the Motions Submitted by Y.V. Tymoshenko and Her Defense Lawyers in the Criminal Case No. 49-3151 at 4.

[337] Trial Transcript at 7 (June 29, 2011).

[338] *Id.*

[339] *Id.* at 8. Article 286 of the CPC states, "If the [Indictment has] not been served to the defendant or [has] been served within less than three days before trial in court session, hearings of the case should be postponed for three days while [this] document[] should necessarily be handed over to the defendant for review." CPC Art. 286.

The trial began on July 4, and Vlasenko was not present in court on that day. Tymoshenko argued that the court had not complied with Article 286 and demanded that the trial commence no earlier than July 5.[340] In Vlasenko's absence, Tymoshenko and another defense counsel, Mykola Tytarenko, also requested that the trial be postponed until July 11, when Vlasenko would return from a business trip aimed at collecting evidence for Tymoshenko's defense.[341] Additionally, Tytarenko argued that he had only received access to the case file for one day, and he requested a one-month adjournment to allow him to study the file.[342] The Court denied the defense's request to postpone the trial until Vlasenko's return but partially granted Tytarenko's request for more time to review the case file, adjourning the trial until July 6.[343]

On July 11, Tytarenko submitted to the court a written petition requesting two months to familiarize himself with the case file, arguing that he had been unable to review the case file until June 29. The prosecution responded that Tytarenko was formally granted the right to review the file on June 16, and as Vlasenko's partner, had access to the case file beginning in late May.[344] After hearing the arguments of both parties, the court denied Tytarenko's motion to adjourn the trial.[345] Citing his inability to

340 Trial Transcript at 1 (July 4, 2011).

341 *Id.* at 1-2.

342 *Id.* at 6, 11.

343 *Id.* at 12.

344 Trial Transcript at 4-10 (July 11, 2011).

345 *Id.* at 10.

prepare adequately, Tytarenko subsequently refused to continue his representation of Tymoshenko.[346]

2. Due Process Standards

Western jurisprudence recognizes that a key component of due process is a defendant's right to adequately prepare a defense in anticipation of criminal proceedings. In the United States, the Sixth Amendment of the Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation . . . and to have the Assistance of Counsel for his defence."[347] The United States Supreme Court has emphasized that this guarantee includes the right of the defendant and the defendant's counsel to prepare adequately against the charges.[348] In recognition of this right, the United States Congress has required by statute that, in cases brought by federal prosecutors, defendants must receive at least 30 days of preparation time after counsel has been obtained.[349] "The Congressional concern was that a defendant be given a reasonable time to obtain counsel and that counsel be provided a reasonable time to prepare the case."[350]

While American jurisprudence recognizes that preparation time must be reasonably adequate, the precise amount of time that is necessary will depend on the facts and circumstances of each individual case. Factors taken into consideration include the

[346] *Id.* at 11.

[347] U.S. Const. amend. VI.

[348] *Gideon v. Wainwright*, 372 U.S. 335, 341 (1963); *Powell v. Alabama*, 287 U.S. 45, 66 (1932).

[349] *See* 18 U.S.C. § 3161(c)(2) ("Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se.").

[350] *United States v. Daly*, 716 F.2d 1499, 1505 (9th Cir. 1983).

nature of the charge, the issues presented, counsel's familiarity with the applicable law and pertinent facts, and the availability of material witnesses.[351] "Some trials involve complicated issues of fact as well as law and it is only practical, in making a determination as to adequate time for preparation, that consideration be given to the character of the case."[352] The trial judge is charged with balancing these considerations against the need to ensure that the trial proceeds smoothly and efficiently. Therefore, trial court judges have wide latitude to schedule trials and enjoy broad discretion in considering the defendant's request for a continuance.[353] A judge's refusal to grant a continuance does not normally constitute grounds for reversing a conviction unless it amounts to "an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay,"[354] such that "the right to defend with counsel [becomes] an empty formality."[355]

Given the fact-dependent nature of the inquiry, American courts vary in their conclusions about what constitutes an adequate amount of time to prepare a defense. For example, where the defendant was tried for criminal contempt based on statements he had made during a prior trial, the Supreme Court deemed five days for preparation as being adequate. In so concluding, the Court took account of several factors: "the evidence was

---

[351] *Ray v. United States*, 197 F.2d 268, 271 (8th Cir. 1952); *see United States v. Farr*, 297 F.3d 651, 655 (7th Cir. 2002) ("[I]n evaluating a request for a continuance, a trial court must weigh a number of factors: 1) the amount of time available for preparation; 2) the likelihood of prejudice from denial; 3) the defendant's role in shortening the effective preparation time, 4) the degree of complexity of the case; 5) the availability of discovery from the prosecution; 6) the likelihood a continuance would satisfy the movant's needs; and 7) the inconvenience and burden to the court and its pending case load.").

[352] *Stamps v. United States*, 387 F.2d 993, 995 (8th Cir. 1967).

[353] *Chambers v. Maroney*, 399 U.S. 42, 53-54 (1970); *Nilva v. United States*, 352 U.S. 385, 395 (1957).

[354] *Morris v. Slappy*, 461 U.S. 1, 11-12 (1983) (quotation marks omitted).

[355] *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964).

fresh, the witnesses and the evidence [were] readily available, the issues [were] limited and clear-cut and the charge revolv[ed] about one statement made by [the defendant] during a recently completed trial."[356] By contrast, in a complex tax fraud case where a defendant faced serious charges carrying the possibility of a five-year prison sentence, 27 days was deemed inadequate for proper preparation of a defense.[357] Notably, courts are less likely to find a continuance request to be reasonable when the defendant is responsible for his or her own lack of time to prepare. For instance, a continuance request made on the eve of trial was properly denied by the trial court where the defendant had refused to cooperate with his counsel, thereby undermining counsel's ability to prepare.[358]

The European Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") also recognizes that a criminal defendant must be given "adequate time and facilities for the preparation of his defence."[359] As the ECtHR has explained, this means that "[t]he accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the possibility to put all relevant defence arguments before the trial court and thus to influence the outcome of the

---

356 *Id*. at 589.

357 *United States v. King*, 664 F.2d 1171, 1173 (10th Cir. 1981)*; see also United States v. Gallo*, 763 F.2d 1504, 1523-24 (6th Cir. 1985) (reversing defendant's conviction of a complex RICO charge for which the trial judge allowed only ten or eleven days to prepare a defense); *Townsend v. Bomar*, 351 F.2d 499, 501-02 (6th Cir. 1965) (finding two days of preparation, which did not give the defense sufficient time to locate witnesses, to be inadequate in a case where defendants faced charges carrying the possibility of lifetime imprisonment).

358 *Farr*, 297 F.3d at 655-56; *United States v. Studley*, 892 F.2d 518, 521-22 (7th Cir. 1989) (affirming the trial court's denial of a motion for a continuance where the defendant's insistence on proceeding *pro se* until one week before trial played a significant part in undermining the ability of counsel to prepare for trial).

359 European Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe at Art. 6 (Nov. 4, 1950) ("Convention").

proceedings."[360] Like its American counterparts, the ECtHR has avoided adopting a fixed rule about timing, instead judging each case based on its individual factors, such as the case's complexity. For example, the Court held that fifteen days was sufficient time for the defendant to prepare for a professional disciplinary hearing, "in view of the lack of complexity of the case."[361] In another instance, the Court held that four days was insufficient time to prepare, given the "magnitude and complexity" of the case—which included a case file of 43,000 pages.[362] The Court expressed its "view that even though it is no doubt important to conduct proceedings at good speed, this should not be done at the expense of the procedural rights of one of the parties."[363]

3. Analysis

a. Access to the Case File

Because of various unresolved factual issues, it is difficult to judge with certainty whether Tymoshenko was given adequate access to her case file. The prosecution claims

---

360 *Yukos v. Russia*, App. No. 14902/04, at ¶ 538 (Eur. Ct. H.R 2011); *see id.* ("The facilities which should be enjoyed by everyone charged with a criminal offence include the opportunity to acquaint himself, for the purposes of preparing his defence, with the results of investigations carried out throughout the proceedings.").

361 *Albert & Le Compte v. Belgium*, App. Nos. 7299/75, 7496/76, at ¶ 41 (Eur. Ct. H.R. 1983); *see also Ferrari-Bravo v. Italy*, App. No. 9627/81, at ¶¶ 5, 14, 28 (Eur. Ct. H.R. 1984) (finding that a period of "less than two months" was sufficient to allow the applicant to review a 50,000 page case file in a criminal trial for treasonable conspiracy, the establishment of an armed gang, and activities aimed at provoking armed insurrection and promoting civil war); *Schöps v. Germany*, App. No. 25116/94, at ¶ 54 (Eur. Ct. H.R. 2001) (holding that "a period of at least two weeks" was sufficient to permit the applicant to review the "essential parts of the admittedly voluminous" 134-volume case file in preparation for an appellate hearing solely concerning the issue of the applicant's continued detention).

362 *Yukos v. Russia*, App. No. 14902/04, at ¶¶ 539-40 (Eur. Ct. H.R. 2011); *see Flandin v. France*, App. No. 77773/01 (Eur. Ct. H.R. 2006) (appointment of defense counsel three weeks after the appeals hearing for a fraud conviction did not allow for adequate time to prepare a defense).

363 *Id.* at ¶ 540 ("[I]t was incumbent on the trial court in the situation at hand to ensure that the applicant company had a sufficiently long period of time during which it could study such a voluminous case file and prepare for the trial hearings and it was up to the applicant company to use this time as it wished.").

that it offered to copy the final four volumes of the file for Vlasenko. It is not clear why he refused, if he did refuse.

b. Defense Request for Additional Investigation

It is also difficult to resolve the factual disputes that exist regarding Tymoshenko's requests for further pretrial investigation. The prosecution claims that Tymoshenko filed her requests after the case had already been transferred from the investigator to the court, making her requests untimely and causing them to be denied. If she did indeed file after the deadline, she and her lawyers bear substantial responsibility for the denials. In the American justice system, that would weigh heavily against her claim that she was given insufficient time to prepare. We are also not aware of any reason the defense request could not have been made before 5:00 p.m. on the day it was due.

c. Trial Date and Defense Requests for Additional Time

The Tymoshenko investigation was completed and the case file made available to her on May 25, 2011. Her trial began approximately forty days later. The original trial date was June 24, but the Court granted Tymoshenko's request for additional time and deferred the start of the trial until July 4, and then at the defense's request adjourned until July 6. American trial courts have wide latitude to determine the timing and pacing of criminal trials, and it is certainly possible that some American courts would see this interval between indictment and trial as not being sufficient to permit adequate preparation of her defense, in light of several considerations: Tymoshenko was charged with a very serious offense, which carried a possible penalty of up to ten years in prison. Although the charges against her were ostensibly simple, they implicated many complex and vigorously disputed legal issues. The central events on which the trial focused took

place on a single day (January 19, 2009), but the trial involved testimony and evidence spanning a broad time period, which had occurred more than two years earlier. The trial itself lasted more than three months and included many witnesses who testified on a range of issues. The size of the case file—approximately 4,000 pages—also reflects the case's scope and complexity.

Furthermore, Tymoshenko contends that during the approximately forty days allotted to her for trial preparation, she and her attorneys were summoned to meet with investigators and prosecutors about unrelated criminal cases on an almost daily basis.[364] She contends that those distractions deprived her of the ability to adequately prepare for trial. The OPG denies that it disturbed Tymoshenko's preparation with frequent meetings, informing Skadden that there may have been one meeting only. Skadden repeatedly asked Tymoshenko's counsel to provide documentary evidence of the "almost daily" meetings, but her counsel did not do so.

Whether or not the "almost daily" meetings occurred, we have concerns about the adequacy of the time allotted to Tymoshenko's defense team to prepare. In our view, most American trial courts would have given more time in a case of this complexity, but few American appellate courts would find a due process violation and reverse the conviction on that basis on the record before us.

B. Selection of the Judge

Tymoshenko's case was assigned to Judge Rodion Kireyev, who presided over her trial and ultimately found her guilty. Throughout the trial, Tymoshenko submitted numerous motions seeking the disqualification of Judge Kireyev, all of which he denied.

[364] Tymoshenko Application at ¶ 11.

She has argued that Judge Kireyev's selection did not accord with legal requirements for the random assignment of cases, but instead was orchestrated by President Yanukovych. She also argues that Judge Kireyev was not sufficiently experienced or impartial. In Tymoshenko's ECtHR application, she maintains that her right to an independent and impartial trial was violated because Judge Kireyev ruled on the motions regarding his own disqualification, without the opportunity for appeal.

1. Factual and Legal Background

The Ukrainian Constitution guarantees "[t]he independence and immunity of judges" and prohibits "[i]nfluencing judges in any manner."[365] First-time judges are appointed for five years by the President.[366] After that period, a judge may be elected to a lifetime term by the Verkhovna Rada, Ukraine's parliament.[367]

The CPC requires that judges be assigned to criminal cases according to an "[a]utomated electronic document management system."[368] A primary goal of this system is to ensure the "objective and unprejudiced distribution of cases among judges."[369] All criminal cases submitted to the court are registered in the system by the criminal administrative office and then randomly distributed by a computer program. In selecting a judge, the program takes into account criteria such as the judge's area of expertise (if relevant)[370] and case load.[371] To be eligible to hear a case, a judge must

---

365 Constitution of Ukraine Art. 126 (May 25, 2006).

366 *Id.* at Art. 128.

367 *Id.*

368 CPC Art. 16-2.

369 *Id.* at Art. 16-2(1).

370 *See* Law of Ukraine on the Judiciary and the Status of Judges, No. 2453-VI, Eur. Comm'n for Democracy Through Law, Art. 18(1) (2010) ("Courts of general jurisdiction shall specialize in civil,

preside in the court in which the case was filed. Once the case has been assigned, the clerk stamps the case file and writes "automatically distributed" on it.[372] Interference with the assignment system is unlawful.[373]

The CPC provides a number of circumstances under which a judge may not hear a case.[374] One such ground for disqualification is a "breach of procedure for determining a judge for trying a case."[375] The CPC also requires disqualification where the judge or the judge's relatives have a personal interest in the case's outcome, including "other circumstances . . . which raise doubts as to the objectivity of the judge."[376] If disqualification is successfully sought against "a judge who tries a case alone, the case is considered in the same court by another judge."[377] There does not appear to be a procedure under the CPC for appealing the denial of a disqualification application.

The case against Tymoshenko was filed on June 17, 2011, in the Pechersky District Court of Kyiv. It was assigned to Judge Kireyev, who had been appointed to a five-year term in 2009, during the Yushchenko Presidency. According to Judge Kireyev,

---

criminal, commercial, and administrative cases . . . ."); *id.* at Art. 18(2) ("In courts of general jurisdiction the specialization of judges in particular categories of cases may be introduced.").

371 Other criteria include whether the judge is currently on leave and whether the case's expected duration is consistent with the term of the judge's mandate. CPC Art. 16-2.

372 Kireyev Skadden Interview at 3 (Apr. 26, 2012).

373 CPC Art. 16-2.

374 *Id.* at Arts. 54, 55.

375 *Id.* at Art. 54(5); Kireyev Skadden Interview at 3 (Apr. 26, 2012).

376 CPC at Art. 54(4).

377 *Id.* at Art. 57.

he was randomly selected for Tymoshenko's trial by the system, and his assignment complied with all procedural requirements.[378]

On June 24, 2011, prior to the start of trial, Tymoshenko filed an application seeking to disqualify Judge Kireyev. Her application argued that he was insufficiently experienced, having been a judge for only two years; that he lacked independence, because his term of office is limited, rather than a lifetime appointment; and that he had previously rendered decisions in other cases with which Tymoshenko disagreed.[379]

Her application also observed that Judge Kireyev was transferred to the Pechersky District Court from another court on April 20, 2011, and suggested that the transfer was effected in order to permit the assignment of her case to him.[380] Sergiy Vlasenko, one of Tymoshenko's attorneys, later elaborated on this accusation. He said that Judge Kireyev's transfer did not comply with a number of the procedural steps that are required by statute. According to Vlasenko, the vacancy at the Pechersky court was not advertised in newspapers or posted on the Internet, and, as a result, Judge Kireyev was the only applicant. Also according to Vlasenko, Judge Kireyev did not take an anonymous qualification exam, the results of which were supposed to determine his eligibility.[381] Vlasenko further stated that Judge Kireyev's transfer application was addressed personally to President Yanukovych, rather than to the Highest Qualification

---

378 Kireyev Skadden Interview at 4 (Apr. 26, 2012).

379 Court Order, *Ukraine v. Tymoshenko*, No. 1-657/2011 at 2 (June 24, 2011) ("June 24, 2011 Court Order").

380 *Id.*

381 Defense Answers to the Questions Raised by the US Lawyers at 1-2 (document provided to Skadden by Tymoshenko's attorney). *See* Law of Ukraine on the Judiciary and the Status of Judges, No. 2453-VI Art. 68 (2010) ("Procedure of Selection for a Judicial Position"); *id.* at Art. 73 ("Transfer of a Judge to Another Court within the Five-Year Term of Appointment").

Commission of Judges of Ukraine, the administrative body in charge of filling vacancies. These alleged procedural anomalies led Vlasenko to conclude that the young, inexperienced judge was selected personally and deliberately by President Yanukovych to preside over the Tymoshenko trial.[382] Vlasenko points to no evidence—direct or indirect—that supports this assertion, however.

Tymoshenko's pretrial application noted as well that several of the documents in her case had been signed by Renat R. Kuzmin, the First Deputy of Ukraine's Prosecutor General, and that Kuzmin sits on the High Council of Justice. As a member of the High Council, Kuzmin has authority to review judges and to make recommendations as to which judges should be disciplined and which should be dismissed for breach of oath (which he has done in approximately 600 instances).[383] Finally, her application noted that the case file contains the signature of the court's Chancellor and Judge Kireyev's name. According to the application, this indicates that the case was distributed by the Chancellor of the court and not by the automated system.[384]

In an opinion dated June 24, 2011, Judge Kireyev rejected Tymoshenko's application for his disqualification.[385] He observed that the CPC provides an exclusive list of circumstances under which a judge may be disqualified.[386] The judge's tenure of office (five years rather than life tenure) is not a valid ground for disqualification under

---

[382] Defense Answers to the Questions Raised by the US Lawyers at 1-2.

[383] June 24, 2011 Court Order at 1.

[384] *Id.*

[385] Article 57 of the CPC states that "[d]isqualification of a judge . . . is considered by other judges without the judge whose disqualification is proposed." It is unclear how this provision is meant to apply when disqualification is sought against the only judge hearing a case. Regardless, it is clear that Judge Kireyev himself considered Tymoshenko's applications to disqualify him. CPC Art. 57.

[386] June 24, 2011 Court Order at 2 (citing CPC Arts. 54-56).

the CPC and does not indicate a lack of independence. Judge Kireyev also referred to several provisions of Ukrainian law that prohibit influencing judges or interfering with the administration of justice. He noted that the High Council of Justice is an independent body of 20 members, the apparent implication being that no particular member's views will be decisive. In conclusion, Judge Kireyev stated that Tymoshenko's application "d[id] not include . . . relevant and proved facts that would indicate such grounds for a disqualification set out in the provisions of the CPC."[387]

During the course of the trial, Tymoshenko filed numerous additional applications to disqualify Judge Kireyev. For instance, she submitted an application seeking his dismissal on July 6, two more on July 18, and another on July 27.[388] These applications typically followed procedural rulings by Judge Kireyev with which Tymoshenko and her attorneys disagreed.[389] For instance, on July 29, Tymoshenko submitted an application seeking to disqualify Judge Kireyev on the basis that he "violates the adversarial principle" and "does not allow sufficient time and opportunity to prepare the defense."[390] Judge Kireyev denied the motion:

> The court sees the repeated application[s] to disqualify the judge as an attempt to delay the trial. Taking into account that the court has considered such applications on numerous occasions, the court decided, there and then to leave the application to disqualify the judge in this case, Rodion V. Kireyev, unexamined.[391]

---

387 *Id.* at 3.

388 Trial Transcript at 15 (July 6, 2011); Trial Transcript at 18, 21 (July 18, 2011); Trial Transcript at 1 (July 27, 2011).

389 Kireyev Skadden Interview at 5 (Apr. 26, 2012).

390 Trial Transcript at 1 (July 29, 2011).

391 *Id.* After this denial, Tymoshenko and Judge Kireyev got into an extended argument about whether she was permitted to respond to his ruling. The argument ended with "[t]he court explain[ing] that the application for disqualification has already been decided upon by the court." *Id.* at 2.

All of Tymoshenko's applications to dismiss Judge Kireyev were denied.

Tymoshenko's ECtHR application includes a claim based on Judge Kireyev's denial of her disqualification motions. She primarily rests her claim on Article 13 of the Convention, which provides that "[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority."[392] Tymoshenko argues that "her right to [an] independent and impartial trial" under the Convention was violated because Judge Kireyev ruled on the applications for his own disqualification, and because his decision could not be appealed.[393]

2. Due Process Standards

"[D]ue process requires a neutral and detached judge in the first instance."[394] A judge must be free from personal animus, bias, or influence. Thus the United States Supreme Court has emphasized that judges who have a personal stake in the outcome of the proceedings are unfit to sit in judgment of them.[395] The Convention similarly entitles all criminal defendants to trial "by an independent and impartial tribunal."[396] This judicial independence lies at the heart of the rule of law: "What is at stake is the

---

392 Convention Art. 13.

393 Tymoshenko Application at ¶ 150.

394 *Concrete Pipe & Prods. v. Constr. Laborers Trust*, 508 U.S. 602, 617 (1993) (quotation marks omitted); *see In re Murchison*, 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process.").

395 *See In re Murchison*, 349 U.S. at 136 ("[N]o man is permitted to try cases where he has an interest in the outcome."); *see also Capetron v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009) (due process required recusal of judge who received a large financial contribution to his election campaign from one of the litigants); *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986) (due process violated where the judge had a financial interest to rule in favor of one of the parties).

396 Convention Art. 6, §1; *see also* Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc. A/810 at Art. 10 (Dec. 10, 1948) ("Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.").

confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused."[397]

American law requires "[a]ny justice, judge, or magistrate judge of the United States [to] disqualify himself in any proceeding in which his impartiality might reasonably be questioned."[398] The goal of this provision is "to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible."[399] A party to a court proceeding may seek the judge's disqualification by filing a motion or affidavit setting forth the basis for the request.[400] In general, the judge whose disqualification is sought is responsible for ruling on the request in the first instance, subject to a limited right to seek review by a higher court.[401]

Just as judges must be free from private bias or influence, so too must they be independent from other parts of the government.[402] A core feature of judicial independence is the principle that judges must be at liberty to reach conclusions that may

---

397 *Hauschildt v. Denmark*, App. No. 10486/83, at ¶ 48 (Eur. Ct. H.R. 1989); *see In re Linahan*, 138 F.2d 650, 651 (2d Cir. 1943) ("Democracy must, indeed, fail unless our courts try cases fairly, and there can be no fair trial before a judge lacking in impartiality and disinterestedness.").

398 28 U.S.C. § 455(a); *see also* ABA Model Code of Judicial Conduct Canon 3(E)(1) (2003).

399 *Liljeberg v. Health Serv. Acquisition Corp.*, 486 U.S. 847, 865 (1988).

400 *See* 28 U.S.C. § 144 ("Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.").

401 *See* Debra Lyn Bassett, *Judicial Disqualification in the Federal Appellate Courts,* 87 IOWA L. REV. 1213, 1235-37 (2002).

402 In emphasizing the importance of judicial independence, Alexander Hamilton, one of the Framers of the U.S. Constitution, quoted the Enlightenment philosopher Montesquieu for the proposition that "there is no liberty, if power of judging be not separated from legislative and executive powers." The Federalist No. 78 at 402 (George W. Carey & James McClellan eds., 1990). Hamilton continued: "The complete independence of the courts of justice is peculiarly essential in a limited Constitution." *Id.*

displease those in power without fearing that they will be fired or disciplined. Otherwise, their decisions will be biased and will lack legitimacy.

Judicial independence vis-à-vis other branches of Government is best ensured through structural protections that reduce the likelihood of bias or influence.[403] For instance, American federal judges serve lifetime appointments and receive a salary that cannot be diminished during their tenure.[404] Although such federal judges may be impeached and removed from office by the Congress, this judge-removal power has long been understood and applied in light of "the principle that legal error, alone, does not constitute an impeachable offense."[405] Judges in some states are elected, however, and in many states, judges serve limited tenures.[406] Structural safeguards help ensure "that a judicial officer, in exercising the authority vested in him, [is] free to act upon his own convictions, without apprehension of personal consequences to himself."[407]

3. Analysis

As Judge Kireyev observed in his opinion dismissing Tymoshenko's pretrial recusal application, Ukrainian law provides a general guarantee of judicial independence and prohibits improper influence. The key, however, is for these general guarantees to be

---

403 *See Findlay v. United Kingdom*, App. No. 22107/93, at ¶ 73 (Eur. Ct. H.R. 1997) ("The Court recalls that in order to establish whether a tribunal can be considered as 'independent,' regard must be had, *inter alia*, to the manner of appointment of its members and their term of office [and] the existence of guarantees against outside pressures . . . .").

404 U.S. Const. art. III, § 1. Many state-court judges also serve lifetime or fixed-term appointments.

405 *See* Adam A. Perlin, *The Impeachment of Samuel Chase: Redefining Judicial Independence*, 62 RUTGERS L. REV. 725, 785 (2010).

406 *See* Judicial Selection in the States, Am. Judicature Soc'y (July 31, 2012), http://www.judicialselection.us/ (providing an interactive database with information for each state).

407 *Stump v. Sparkman*, 435 U.S. 349, 355 (1978) (quotation marks omitted). This case concerned a different structural protection for judicial independence—judicial immunity—but the principle it articulates applies more broadly.

implemented through concrete structural safeguards, and for those safeguards to be followed consistently. Tymoshenko's claims regarding Judge Kireyev's participation in her trial fall into two categories: structural objections to certain aspects of the judge-selection and judge-disqualification rules in Ukraine; and specific objections to the application of the rules in her case.

Structural objections. Tymoshenko argues that the "probationary" five-year term for first-time judges leaves them vulnerable to political pressure, creating a risk that they will decide cases in the OPG's favor in order to secure their own reappointment. However, under Western standards, while lifetime tenure is perhaps the gold standard from a judicial-independence standpoint, a judge's independence and impartiality are not necessarily compromised merely because his or her commission will be reevaluated after five years. As noted, many American judges in state courts, for instance, are subject to periodic reappointment or reelection.[408]

Tymoshenko argues in her ECtHR application that Ukrainian law violates the principle "that no person may be a judge in his own case," because it permits a district court judge to rule on his or her qualification to hear the suit.[409] This facet of Ukrainian law is not markedly different than American law, in which a defendant's motion to disqualify a district court judge will be evaluated by that judge in the first instance. Unlike the CPC, however, American law permits the defendant to have an adverse ruling

---

[408] *See* U.S. Department of Justice, Bureau of Justice Statistics, "State Court Organization 2004" at tbl. 4 (Selection of Appellate Court Judges) & 6 (Selection of Trial Court Judges). *See also* B. Michael Dann & Randall M. Hansen, *Judicial Retention Elections*, 34 LOY. L.A. L. REV. 1429, 1429 (2000-2001) ("Twenty states use some form of judicial retention election for appellate court judges and justices, and twelve states use retention elections for at least some of their trial court judges.").

[409] Tymoshenko Application at ¶ 152.

examined by other judges, albeit under a deferential standard of review.[410] This secondary layer of review helps ensure that defendants are not left without recourse in genuine instances of bias.[411] For that reason, Ukraine would do well to consider adopting some form of review by judges other than the one whose disqualification is sought.

However, under Western standards, any attempt to disqualify a judge must be substantiated with specific evidence that calls the judge's impartiality into question.[412] As one court explained, "[disqualification] on demand would put too large a club in the hands of litigants and lawyers, enabling them to veto the assignment of judges for no good reason. Thus, compulsory [disqualification] must require more than subjective fears, unsupported accusations, or unfounded surmise."[413]

More troubling are Tymoshenko's allegations regarding the role of the Prosecutor General in disciplining judges. It is dangerous to the rule of law to give influence over judicial discipline to the OPG's head prosecutor—a frequent litigant with a strong inclination in favor of criminal convictions. Judge Kireyev correctly noted that the Prosecutor General is merely one member of the High Council of Justice, but his role nevertheless creates a risk of improper influence and the appearance thereof. As the

---

410 *See* Adam A. Perlin, *The Impeachment of Samuel Chase: Redefining Judicial Independence,*" 62 RUTGERS L. REV. 725, 785 (2010).

411 The U.S. Supreme Court is a notable exception: A motion to recuse a Supreme Court Justice is considered by the Justice against whom recusal is sought, without opportunity for appeal. *See* Chief Justice John G. Roberts, 2011 Year-End Report on the Federal Judiciary at 8-9 ("There is no higher court to review a Justice's decision not to recuse in a particular case. This is a consequence of the Constitution's command that there be only 'one supreme Court.'").

412 *See, e.g.*, *In re Boston Children First*, 244 F.3d 164, 167 (1st Cir. 2001) ("disqualification appropriate only when the charge is supported by a factual basis").

413 *In re United States*, 158 F.3d 26, 30 (1st Cir. 1998).

European Commission for Democracy Through Law (a.k.a. "the Venice Commission") explained:

> The prosecutor general is a party to many cases which the judges have to decide, and his presence on a body concerned with the appointment, disciplining and removal of judges creates a risk that judges will not act impartially in such cases or that the prosecutor general will not act impartially towards judges whose decisions he disapproves of.[414]

One international organization has identified a number of cases in which judges were allegedly targeted for discipline because they made rulings that were adverse to the prosecution.[415] We are not in a position to evaluate whether the High Council has misused its authority, or whether the threat of discipline and dismissal had an effect on Judge Kireyev in this case. However, the sheer volume of "breach of oath" dismissals sought in recent years in Ukraine raises the specter that judicial independence is undermined by the judicial discipline system, a system in which the prosecution sits on the reviewing council.

Specific objections. Tymoshenko takes issue with Judge Kireyev's relative youth and inexperience, and argues that his denial of her many motions indicates bias on his part. However, Tymoshenko offers no reason to think that Judge Kireyev's relative lack of experience itself denied her due process. Moreover, many of Tymoshenko's examples of supposed partiality would not be credited by American courts. For instance, one of her

---

[414] Peter Byrne, *President taps Pshonka*, KYIV POST, Nov. 12, 2010, http://www.kyivpost.com/content/ukraine/president-taps-pshonka-a-loyalist-with-questionabl.html.

[415] Danish Helsinki Committee for Human Rights, Legal Monitoring in Ukraine IV at 14-15 (2012); *see id.* at 15 (citing an anonymous survey for the conclusion that "57 percent of the judges [surveyed] did not consider the High Council of Justice to be independent").

motions sought Judge Kireyev's disqualification based on his refusal to switch the trial to a larger courtroom, which supposedly indicated his bias.[416]

Finally, Tymoshenko also argues that the proper case-assignment procedures were not applied when selecting Judge Kireyev. However, Tymoshenko has not substantiated this argument with any affirmative evidence. Rather, she argues that the OPG has refused to provide her with evidence disputing her allegation. In response to a request by Skadden, I.O. Otrosh, Chairman of the Pechersky District Court, provided a letter attesting to the fact that the "automated workflow court system" used for assigning cases was applied in a manner consistent with required regulations.[417] Furthermore, Judge Kireyev told Skadden that he was not approached by the OPG in advance and that he had no reason to doubt that his selection was handled in accordance with regular procedures. He also denied meeting *ex parte* with any counsel involved in the case.

C. Jury Request

The Ukrainian Constitution refers to the use of juries in the administration of justice, but no jury trial procedures exist under current law, and no such trial has ever been held. Prior to trial, Tymoshenko requested to be tried in front of a jury, but her request was denied, and she was tried instead by a judge.

1. Factual and Legal Background

The Ukrainian Constitution states that "[t]he people directly participate in the administration of justice through people's assessors and jurors."[418] The most recent

---

[416] *Id.* at 25.

[417] Letter from I.O. Otrosh, Chairman of the Pechersky District Court to Skadden (Sept. 11, 2012).

[418] Constitution of Ukraine Art. 124 (May 25, 2006). *See also id.* at Art. 127 ("Justice is administered by professional judges and, in cases determined by law, people's assessors and jurors."); *id.* at Art. 129

statutory revision to Ukraine's judicial system was adopted in 2010.[419] While the law contains several provisions that outline the procedures and requirements for people's assessors,[420] it mentions the jury right in only one provision:

> Jurors shall be citizens of Ukraine who in situations prescribed by the procedural law shall be engaged in administration of justice, providing direct participation of the people in the administration of justice as required by the Constitution of Ukraine.[421]

The CPC does not discuss the right to a jury. As of December 2011, no civil or criminal jury trial had been held in Ukraine.[422]

Prior to trial, Tymoshenko requested to be tried by a jury.[423] Her motion was rejected, and she was tried instead by a single judge.

2. Due Process Standards

The right of a criminal defendant to be tried before a jury has deep roots in Anglo-American law.[424] The U.S. Constitution guarantees a right to trial "by an impartial jury"

("Judicial proceedings are conducted by a single judge, by a panel of judges, or by a court of the jury.").

419 Law of Ukraine on the Judiciary and the Status of Judges, No. 2453-VI (2010).

420 *Id.* at Arts. 57-62. A people's assessor is "a citizen of Ukraine who . . . adjudicate[s] cases, as a member of a court panel, together with a judge, providing direct participation of the people in the administration of justice." *Id.* at Art. 57(1).

421 *Id.* at Art. 63.

422 Taraz Kuzio, *Ukraine and Georgia Approach Justice in Eurasian and European Ways*, EURASIA DAILY MONITOR, Vol. 8: Issue 224, Dec. 9, 2011, http://www.unhcr.org/refworld/docid/4ee5d8722.html; Bohdan A. Futey, *Why Ukraine still has no jury trials*, KYIV POST, June 16, 2011, http://www.kyivpost.com/opinion/op-ed/why-ukraine-still-has-no-jury-trials.html ("nothing has been done to implement juries in Ukrainian courts"); Elizabeth R. Sheyn, *A Foothold for Real Democracy in Eastern Europe: How Instituting Jury Trials in Ukraine Can Bring About Meaningful Governmental and Juridical Reforms and Can Help Spread These Reforms Across Eastern Europe*, 43 VAND. J. TRANSNAT'L L. 649, 651 (2010).

423 Skadden asked Vlasenko, Tymoshenko's counsel, for a copy of the motion he submitted requesting a jury trial, but the motion was not provided to us.

424 *See Duncan v. Louisiana*, 391 U.S. 145, 151-154 (1968) (tracing the right's origin in early English and American law); *see also United States v. Gaudin*, 515 U.S. 506, 510-511 (1995).

in "all criminal prosecutions."[425] As one prominent author noted, this right is believed "to guard against a spirit of oppression and tyranny on the part of rulers," and "was from very early times insisted on by our ancestors in the parent country, as the great bulwark of their civil and political liberties."[426]

Nevertheless, although the use of criminal juries is relatively widespread among Western-style democracies,[427] it is by no means a universal practice.[428] In discussing the use of juries, the ECtHR has noted the variety of historical traditions and practices. Rather than requiring jury trials as an element of human rights, the Court has concluded that nations should "enjoy considerable freedom in the choice of the means calculated to ensure that their judicial systems are in compliance with" their obligations to ensure that trials are fair.[429]

3. Analysis

Under established rule-of-law principles, we do not believe that Tymoshenko's trial was unfair or violated due process because she was tried by a judge rather than a jury. First, although jury trials are required in the United States and some other European nations, the ECtHR has held that a jury trial is not essential to providing a fair trial. Second, since no jury trial has ever been held in Ukraine, Tymoshenko cannot argue that

---

425 U.S. Const. amend. VI.

426 J. Story, Commentaries on the Constitution of the United States, vol. 2 at 540-541 (4th ed. 1873).

427 Ethan J. Leib, *A Comparison of Criminal Jury Decision Rules in Democratic Countries*, 5 OHIO ST. J. OF CRIM. L. 629, 635-641 (2007-2008) (listing, among others, Australia, Belgium, Canada, England, Ireland, Spain, and Switzerland).

428 *Taxquet v. Belgium*, App. No. 926/05, at ¶ 45 (Eur. Ct. H.R. 2010) ("fourteen Council of Europe member States have never had a jury system or any other form of lay adjudication in criminal matters or have abolished it"); Ethan J. Leib, *A Comparison of Criminal Jury Decision Rules in Democratic Countries*, 5 OHIO ST. J. OF CRIM. L. 629, 631-635 (2007-2008) (listing, among others, the Czech Republic, Hungary, and the Netherlands).

429 *Taxquet v. Belgium*, App. No. 926/05, at ¶¶ 83-84 (Eur. Ct. H.R. 2010).

she was treated differently in this respect from any other defendant. Ukraine's commitment to the rule of law will be strengthened, however, when the jury right mentioned in its Constitution has been fully implemented. Until then, the gap between the constitutional promise and actual practice may send a message that the justice system is not upholding Ukrainian citizens' rights. Additionally, as lawyers experienced in the American criminal justice system, we believe that jury trials perform an important role in protecting liberty and ensuring fairness.

D. Removal from the Courtroom

Judge Kireyev ordered Tymoshenko removed from the courtroom during the trial on two occasions: July 6 and July 15, 2011. We review these incidents under the standards imposed by the United States Constitution and by Article 6 of the Convention.

Tymoshenko's Courtroom Behavior. Before turning to the specific incidents giving rise to Tymoshenko's claims, however, we offer some general observations about Tymoshenko's conduct during the course of the proceedings, because it provides important context. Throughout the trial, Tymoshenko repeatedly clashed with Judge Kireyev, as well as with prosecutors and certain witnesses, and engaged in what appears to be a deliberate attempt to undermine the legitimacy of the process. On at least one occasion, Tymoshenko stated that her actions were intended as a form of protest "against the unjust actions, against the lack of justice in Ukraine, against similar humiliations and abuse of millions of people in Ukraine on the part of the judicial system."[430]

Her "protest" took a number of forms. On multiple days of trial, Tymoshenko refused to stand when addressing the court as required by CPC Article 271, despite Judge

[430] Trial Transcript at 1 (July 15, 2011).

Kireyev's multiple requests that she obey the CPC.[431] She often responded to such requests by questioning the validity of the trial, noting for example that "When a court, not an absurdity, is available in this country, I will behave accordingly."[432] Tymoshenko also repeatedly attempted to justify her refusal to comply with court orders by citing Article 55 of the Ukrainian Constitution for the principle that she had the right "to defend [herself] from any violation of [her] rights and freedoms in such way as such individual may deem it necessary or feasible."[433] At one session, she relied on this provision for the proposition that "[t]he Constitution of Ukraine grants me the right to protest in whatever form I wish."[434] On a number of occasions, she responded to the prosecution's petitions with statements such as "Better to shoot me right now. Give me a revolver,"[435] and "Shoot me—you are worse than the Nazis."[436]

On other occasions, Tymoshenko made hostile statements to the court, including stating that she wished to "warn [the Judge] that he is responsible [under] the law for

---

431 *See, e.g.*, *id.*; Trial Transcript at 11 (July 18, 2011); Trial Transcript at 1-2 (July 27, 2011); Trial Transcript at 1 (July 29, 2011).

432 Trial Transcript at 1 (July 6, 2011).

433 *See, e.g.*, Trial Transcript at 1 (July 15, 2011). Ukraine's Constitution provides that "Human and citizens' rights and freedoms are protected by the court. Everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers. Everyone has the right to appeal for the protection of his or her rights to the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine. After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant. *Everyone has the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law*." Constitution of Ukraine Art. 55 (May 25, 2006) (emphasis added).

434 Trial Transcript at 1 (Sept. 7, 2011).

435 Trial Transcript at 17 (Aug. 5, 2011).

436 Trial Transcript at 13 (July 28, 2011).

designedly non-lawful actions and designedly non-lawful decisions."[437] She frequently insulted the judge, the prosecutors (to whom she repeatedly referred as defense counsel for RosUkrEnergo, a private intermediary in gas transactions between Russia and Ukraine before 2009),[438] and the trial process itself, stating that the court had become "a repressive machine" operating under the orders of President Yanukovych.[439] Epithets that Tymoshenko hurled at Judge Kireyev included "executioner,"[440] "fascist,"[441] "monster,"[442] and "puppet."[443] She also made statements that the court perceived as hostile and threatening towards certain witnesses, most notably towards current Prime Minister Mykola Azarov, whom she accused of lying[444] and to whom she repeatedly referred as corrupt, at one point declaring, "The entire country is already weeping, with your knowledge, and with cheap Pampers and condoms."[445] Tymoshenko also repeatedly entered duplicative motions to disqualify Judge Kireyev, eventually provoking the Judge to declare that he would no longer examine such motions, which he interpreted as an attempt to delay trial proceedings.[446]

---

437 Trial Transcript at 8 (July 6, 2011).

438 Trial Transcript at 26 (Aug. 10, 2011); Trial Transcript at 16 (Aug. 11, 2011).

439 Trial Transcript at 28 (Aug. 5, 2011).

440 Trial Transcript at 13 (July 28, 2011).

441 Trial Transcript at 6 (July 18, 2011).

442 Trial Transcript at 13 (July 6, 2011).

443 Trial Transcript at 21 (Sept. 5, 2011).

444 Trial Transcript at 22 (Aug. 5, 2011).

445 *Id.* at 14. Azarov told Skadden that Tymoshenko "was very bold, very loud and showed the maximum level of disrespect that I have ever seen in a courtroom." Azarov Skadden Interview at 1 (May 18, 2012).

446 Trial Transcript at 1 (July 29, 2011). *See, e.g.*, Trial Transcript at 13-15 (July 6, 2011); Trial Transcript at 15, 21 (July 18, 2011).

United States courts are familiar with the difficult issues presented by obstreperous defendants, and have developed mechanisms for ensuring proper decorum in the courtroom. These mechanisms must be applied judiciously, "mindful that courts must indulge every reasonable presumption against the loss of" the defendant's rights.[447] The mechanisms used by Judge Kireyev to deal with Tymoshenko's conduct are examined in further detail below.

1. Factual and Legal Background

The CPC states that a case must be considered by a trial court "in the presence of the defendant whose appearance in court is necessarily required."[448] The CPC also provides, however, for certain standards governing trials. Among these are the requirements of Article 271 that:

> All participants to trial, as well as those present in court room are required to follow [the] presiding judge's instructions relating to the order in court session. All participants to trial address the court, give their testimonies, and make their statements upright. Derogation from this rule is allowed only upon permission of the presiding judge.[449]

When a defendant violates this Article by disobeying the judge's orders, the judge is authorized to warn the defendant that "if he/she continues in the same way, he/she will be removed from the courtroom."[450] Repeated violations by a defendant may result in her removal from the courtroom "temporarily or for the whole trial upon court's decision."[451]

---

447 *Illinois v. Allen*, 397 U.S. 337, 343 (1970).

448 CPC Art. 262; Trial Transcript at 184 (July 15, 2011). There are two exceptions to this requirement, neither of which is relevant here: (1) "when the defendant stays outside the limits of Ukraine and evades appearing in court" or (2) "if the defendant requests that his/her case related to crime which may not be punished with confinement be considered in his/her absence." CPC Art. 262.

449 CPC Art. 271.

450 *Id.* at Art. 272; Trial Transcript at 2 (July 15, 2011).

451 CPC Art. 272.

a. The First Removal (July 6, 2011)

On July 6, 2011, the second day of the trial, Tymoshenko was represented in court by defense attorney Mykola Tytarenko.[452] Lead defense counsel Sergiy Vlasenko was not present.[453] On that day, Judge Kireyev warned Tymoshenko repeatedly that she was required to stand up when addressing the Court. The Judge stated that her refusal to do so disrupted order in the courtroom and violated the CPC.[454] Tymoshenko responded to these warnings by questioning the court's authority, including making the following statements:

> I have said repeatedly that I will stand up when there is a court. This is my position.[455]
>
> When a court, not an absurdity, is available in this country, I will behave accordingly.[456]

Following each of these statements, the judge warned Tymoshenko against violating the CPC.[457]

During the afternoon session on July 6, Tymoshenko responded to a question from the judge by stating:

> When the Court passed by me, I said that you are a monster. You are a monster. You together with the Presidential Administration have just sent the riot police and others against the unarmed people. You are a monster.[458]

---

[452] Trial Transcript at 1 (July 6, 2011).

[453] *Id.*

[454] *Id.*

[455] *Id.*

[456] *Id.*

[457] *Id.*

[458] *Id.* at 13.

Following this statement, Judge Kireyev raised the possibility of removing Tymoshenko from the courtroom for the remainder of the day, stating that "the Defendant is committing direct contempt of the Presiding Judge. The court ha[s] repeatedly asked, called for [order], elaborated, and explained the provisions of the Criminal Procedure Code of Ukraine and moral norms" to Tymoshenko and others present in the courtroom.[459] The prosecutors supported the suggestion of removing Tymoshenko, stating that removal was proper under Article 272 "[s]ince the Defendant has been reprimanded by the Presiding Judge countless times."[460] The judge ordered Tymoshenko removed from the courtroom for the remainder of the day.[461]

b. The Second Removal (July 15, 2011)

On July 15, at the end of the second week of trial, Tymoshenko appeared in court without the benefit of representation by counsel. Lead defense counsel Sergiy Vlasenko was not present, and no other counsel was representing Tymoshenko.[462] (The issues related to Tymoshenko's lack of representation by counsel are analyzed in Part IV.F of this report). At the outset of the day's proceedings, Judge Kireyev again reprimanded Tymoshenko for her failure to stand while addressing the Court, pursuant to Article 271 of the CPC.[463] Tymoshenko confirmed her understanding of the CPC rules but stated that Article 55 of the Ukrainian Constitution[464] granted her the right to defend herself "from

---

[459] *Id.*

[460] *Id.*

[461] *Id.* at 14.

[462] Trial Transcript at 1 (July 15, 2011).

[463] *Id.*

[464] Article 55 provides:

any violation of [her] rights and freedoms in such way as such individual may deem it necessary or feasible" and that her refusal to stand was her method of protest against "the unjust actions, against the lack of justice in Ukraine, against similar humiliations and abuse of millions of people in Ukraine on the part of the judicial system, among others."[465]

Judge Kireyev explained to Tymoshenko that, unless she presented evidence of her inability to comply with the requirements of Article 271, a repeated failure to comply based on "frivolous grounds" would result in her removal from the courtroom.[466] In response, Tymoshenko again cited Article 55 of the Ukrainian Constitution, stating that "everyone has the right to use any means other than those prohibited by law to defend their rights and freedoms from violations or wrongful encroachment."[467] She continued:

> I believe that this court trial is no trial at all, but a political reprisal ordered by Ukrainian President Viktor F. Yanukovych. . . . [N]o rules contrary to the Constitution shall have any effect to the extent they contradict the Ukrainian Constitution. . . . I have the right to protest. I am not disrupting this court proceeding—please proceed. . . . I request that none of my constitutional rights be violated and that no provisions of the Ukrainian CPC be read out to me to the extent they are expressly inconsistent with Article 55 of the Ukrainian Constitution. . . . Unfortunately, all power is

---

> Human and citizens' rights and freedoms are protected by the court.
>
> Everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers.
> . . .
> Everyone has the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law.
>
> Constitution of Ukraine Art. 55 (May 25, 2006).

465 Trial Transcript at 1 (July 15, 2011).

466 *Id.* at 2.

467 *Id.* at 3.

> in the hands of criminal groups nowadays, and you work together with them.[468]

The judge informed Tymoshenko that these were "frivolous grounds" and that her statement was "irrelevant . . . and . . . demonstrates contempt of court."[469] To this, Tymoshenko replied, "If there is ever a court in Ukraine, I will respect such court. This is not a court yet. I would like to finish my comments concerning my view of the Ukrainian CPC."[470] When informed that she would have to stand in order to do so, Tymoshenko became increasingly sarcastic, repeatedly asking the judge to again explain the CPC, telling him, "Your explanations are so lucid and easy to understand that I would like to hear more from you," and stating, "I understand it is important for Yanukovych that I stand up."[471]

In addition to repeatedly refusing to stand while addressing the Court, Tymoshenko also continued to address the Court in what Judge Kireyev determined was a contemptuous manner. This resulted in at least 20 additional requests from the Judge that Tymoshenko comply with the CPC and at least one additional, express warning that continued failure to comply would result in removal.[472] After a protracted debate between Tymoshenko and Judge Kireyev regarding this point, Prosecutor Mikitenko stated that Article 55 of the Ukrainian Constitution grants individuals the right to defend themselves by methods "other than prohibited by law" and noted that Article 271 of the

---

[468] *Id.*

[469] *Id.; see also id.* at 6-7 (finding that Tymoshenko's explanations were "frivolous" and "demonstrate[d] the unwillingness of Defendant Yulia V. Tymoshenko to comply with the requirements of Ukrainian laws, specifically, the rules of the Ukrainian CPC.").

[470] *Id.* at 3.

[471] *Id.* at 4.

[472] *Id.* at 5-11.

CPC prohibits speaking to a presiding judge while in “any bodily position other than standing.” [473] Tymoshenko denied that there was any such explicit prohibition in Article 271 and continued to state that she was “not violating any law” by her refusal to stand, while Judge Kireyev repeatedly stated that her actions were in direct violation of the CPC.[474]

Tymoshenko then attempted to make a motion for the recusal of Judge Kireyev, stating that the judge “violates my right to apply the articles of the Constitution which entitle me to defend my rights and freedoms.”[475] Tymoshenko refused to stand to present the motion, however. Prosecutor Mikitenko moved that “the Court resolve this matter as provided by Article 272 of the Ukrainian CPC [“Measures to be taken against violators of the routine of court session”], which is mandatory under the circumstances,” noting that Judge Kireyev had admonished Tymoshenko “ten or fifteen times perhaps.” [476] Tymoshenko replied by stating:

> I know that your verdict has already been written and neither my presence nor the presence of my defenders in this courtroom is relevant to you. You are executioners—you are no prosecutors or judges.[477]

Following this statement, Tymoshenko was removed from the courtroom based on “continued violations of the requirements of the Ukrainian CPC and because the Defendant has been repeatedly warned . . . but clearly remains in contempt of court.”[478]

---

473 *Id.* at 11.

474 *Id.* at 11-12.

475 *Id.* at 14.

476 *Id.*

477 *Id.*

478 *Id.* at 15.

Prosecutor Mikitenko stated that he supported her removal from the courtroom. The Representative of the Civil Claimant (Naftogaz) said that he deferred to the Court.[479] Tymoshenko, however, refused to stand and was therefore not permitted to give her opinion on the matter of her removal.[480]

After Tymoshenko's removal on July 15, Prosecutor Mikitenko introduced character evidence regarding Tymoshenko, in the form of a letter stating that Tymoshenko "has committed a crime in the Russian Federation . . . related to bribing officials of the Russian Federation Ministry of Defence for entering into agreements with the UESU corporation."[481] Neither Tymoshenko nor any defense attorney was present at this time, and the document was entered into the record.[482] Following admission of the letter, the Court ruled that the preparatory phase of the trial had ended and that the judicial investigation was initiated. Prosecutor Liliya Frolova then read the indictment against Tymoshenko.[483]

2. Due Process Standards

The right of a defendant to be present at her own trial is an important aspect of due process.[484] Among other things, the defendant's presence enables the defendant to communicate with and assist counsel in the presentation of the defense.[485] It also is

479 *Id.* at 15-16.

480 *Id.* at 16.

481 *Id.* at 17.

482 *Id.*

483 *Id.*

484 *See United States v. Gagnon*, 470 U.S. 522, 526 (1985) (per curiam).

485 *See Snyder v. Massachusetts*, 291 U.S. 97, 106 (1934), *overruled in part on other grounds by Malloy v. Hogan*, 378 U.S. 1 (1964).

necessary to the defendant's right to confront and cross-examine accusatory witnesses, which "is critical for ensuring the integrity of the fact-finding process."[486]

The Confrontation Clause of the Sixth Amendment to the United States Constitution thus requires that "In all criminal prosecutions, the accused shall enjoy the right to . . . be informed of the nature and cause of the accusation" and "to be confronted with the witnesses against him."[487] This provision recognizes that "[c]ross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested."[488] The U.S. Supreme Court has emphasized that the defendant has the right to be present whenever his presence relates in a "reasonably substantial" manner to his opportunity to defend against criminal charges.[489]

The defendant's right to be present at trial is not unqualified, however. The Supreme Court has held that a defendant may lose this right "if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists in conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom."[490] Courts have upheld a defendant's removal where the defendant has been extremely disruptive or threatening towards the judge and others present in the courtroom.[491] The

---

486 *Kentucky v. Stincer*, 482 U.S. 730, 736 (1987).

487 U.S. Const. amend. VI.

488 *Davis v. Alaska*, 415 U.S. 308, 316 (1974); *see California v. Green*, 399 U.S. 149, 158 (1970) ("cross-examination [is] the greatest legal engine ever invented for the discovery of truth" (quotation marks omitted)).

489 *Stincer*, 482 U.S. at 745.

490 *Allen*, 397 U.S. at 343. In that case, the court repeatedly informed the defendant that he could return to trial when he would agree to conduct himself in an orderly manner.

491 *See id.*; *United States v. Williams*, 431 F.3d 1115, 1120 (8th Cir. 2005); *Scurr v. Moore*, 647 F.2d 854, 855-58 (8th Cir. 1981).

key issue in determining whether the defendant's removal violated his rights is whether the defendant's absence interferes with his opportunity for effective cross-examination and the right to put on an effective defense.[492]

Article 6 of the Convention requires that "[e]veryone charged with a criminal offence" has the right "to defend himself in person or through legal assistance of his own choosing."[493] The ECtHR has repeatedly stated that "in the interests of a fair and just criminal process it is of capital importance that the accused should appear at his trial, and the duty to guarantee the right of a criminal defendant to be present in the courtroom . . . ranks as one of the essential requirements of Article 6."[494] A defendant may waive his right to take part in the trial, though any such waiver must be established "in an unequivocal manner and be attended by minimum safeguards commensurate to its importance."[495] The defendant also may implicitly waive this right through disruptive conduct, but only if it is shown that he "could reasonably have foreseen what the consequences of his conduct would be."[496]

3. Analysis

a. The First Removal (July 6, 2011) - Defense Counsel Present

Tymoshenko was removed from the courtroom on July 6 because of her repeated failure to stand when addressing the Court and her verbal insults against the judge, including calling the judge "a monster." The U.S. Supreme Court has found that highly

---

[492] *Stincer*, 482 U.S. at 740.

[493] Convention Art. 6, §3(c).

[494] *Hermi v. Italy*, App. No. 18114/02, at ¶ 58 (Eur. Ct. H.R. 2006) (citations omitted).

[495] *Idalov v. Russia*, App. No. 5826/03, at ¶¶ 170, 172 (Eur. Ct. H.R. 2012).

[496] *Id.*; *see also Jones v. United Kingdom*, App. No. 30900/02 (Eur. Ct. H.R. 2003).

disruptive behavior (such as constant, abusive interjections and threats) justifies removal of a defendant.[497] On the other hand, a federal appellate court found that less intrusive behavior—a refusal to stop talking with counsel—did not justify removing the defendant from the courtroom.[498]

Several factors indicate that Tymoshenko's removal from the courtroom on July 6 did not violate her rights. First, the Court warned Tymoshenko several times before her removal that her actions were disruptive and in violation of the CPC, including at least one express warning that her behavior could result in her removal from the courtroom.[499] Such repeated warnings can be viewed as having given Tymoshenko the ability to reasonably foresee the consequences of her continued misconduct. Second, Tymoshenko was removed for only a few hours: her removal was raised in mid-afternoon on July 6, and the Court specified that removal was for only one session.[500] No witnesses testified in her absence, and so her ability to cross-examine witnesses was not affected. Third, her defense counsel remained present in the courtroom and could have intervened or objected on Tymoshenko's behalf.

b. The Second Removal (July 15, 2011) - Defense Counsel Not Present

Before her removal on July 15, Tymoshenko was warned at least twice that continuing to act in a manner that Judge Kireyev felt was disruptive of the court

[497] *See, e.g.*, *Allen*, 397 U.S. 337.

[498] *See, e.g.*, *United States v. Ward*, 598 F.3d 1054, 1057-60 (8th Cir. 2010). The court in *Ward* found a constitutional violation based on the defendant's removal for refusing to cease talking with counsel during court proceedings. The court found it problematic that the defendant was removed at an early stage of trial and was never allowed back, including to testify in his own defense. *Id.* at 1059-1060.

[499] Trial Transcript at 8 (July 6, 2011).

[500] *Id.* at 13.

proceedings would result in her removal from the courtroom. Unlike the July 6 removal, however, Tymoshenko was not represented by counsel on July 15. No member of her defense team was present in court, and Judge Kireyev had refused to consider the motion to admit new counsel that Tymoshenko attempted to introduce on the morning of that day. (See Part IV.F, *infra*.) Following her removal, character evidence was introduced by the prosecution in the form of a letter.

While we have concerns about Judge Kireyev's decision to proceed with the trial while Tymoshenko remained totally unrepresented, we do not believe that she was prejudiced as a result. The only evidence admitted during her absence was a document, to which she or her attorney could have objected upon returning to the courtroom at a later session. (We are unaware of any such objection having been made.) Her presence in the courtroom at that time was therefore far less essential to her defense than it would have been under other circumstances, such as if it had occurred while a witness was being questioned.

E. Detention

Beginning on April 13, 2011, Judge Kireyev set the conditions of Tymoshenko's release as release on her own recognizance, with travel restrictions. These measures continued during the course of the trial. On August 5, however, Judge Kireyev granted the prosecutor's petition to change Tymoshenko's restraining measures to custody in a detention facility.[501] Tymoshenko remained incarcerated for the remainder of her trial, as well as for the period of time between the conclusion of her trial and the Court's announcement of its judgment of conviction and sentencing, at which time her

[501] Court Order, *Ukraine v. Tymoshenko*, No. 1-657/2011 (Aug. 5, 2011) ("Aug. 5, 2011 Court Order").

imprisonment continued pursuant to the conviction and sentence.[502] Judge Kireyev's detention order stated that Tymoshenko "systematically commits actions during hearings which in effect interfere with the trial, treats the parties to the trial and the court with contempt, and disrupts court procedures, refusing to provide her permanent address or to provide proof that she was notified of the time, date, and place of the next court session, failing to appear in court at the appointed time, and refusing to provide an explanation for the failure to appear."[503] The order further stated that it was necessary to change her restraining measures on the ground that Tymoshenko, "if allowed to remain free, may fail to appear in court and refuse to follow court orders and will interfere with the progress of the trial . . . ."[504]

On August 10, 2011, Tymoshenko lodged an application with the ECtHR.[505] In this application, which remains pending, Tymoshenko alleges that the imposition of her detention pursuant to the August 5 order was not justified by the facts or by "the national legislation."[506] She also claims that the Court imposed her open-ended detention without any consideration of alternative preventive measures.[507] Tymoshenko also objects to her inability to appeal the detention order.[508]

---

502 Tymoshenko Application at ¶¶ 85-86, 108 (stating that Tymoshenko was held at the SIZO detention center beginning on August 5, 2011).

503 Aug. 5, 2011 Court Order at 2.

504 *Id.*

505 Tymoshenko Application.

506 *Id.* at ¶ 113.

507 *Id.* at ¶¶ 85, 95, 121.

508 *Id.* at ¶¶ 122-123.

In her application to the ECtHR, Tymoshenko also alleged that the conditions of her detention at the SIZO (detention center) were in violation of Articles 2 and 3 of the Convention. *Id.* at ¶¶ 101-112. On

1. Factual and Legal Background

Under Article 148 of the Ukrainian CPC, restraining measures may be imposed on defendants in order to, among other things, prevent attempts to avoid inquiry or trial or to obstruct establishing the truth in a criminal case, or to ensure execution of procedural decisions.[509] Restraining measures are imposed when there are sufficient grounds to believe that the defendant will engage in such actions.[510] Article 165 of the CPC governs the manner in which those measures may be modified, including that "custody shall be imposed only upon a [reasoned[511]] decision of the judge or ruling of the court."[512]

Tymoshenko was not detained during the preliminary investigation. Under the measures applied to her on April 13, she was free on her own recognizance with certain travel restrictions.[513] On July 27, during trial, the prosecutors initially filed a petition to detain Tymoshenko.[514] The prosecution based its request for imprisonment on the contention that Tymoshenko's actions in court "prevented the truth from being ascertained in the course of the proceedings and failed to comply with the procedural

---

March 20, 2012, the Government of Ukraine submitted its response to Tymoshenko's allegations to the ECtHR. In that response, the Government stated that those claims were "groundless" and that many were the results of Tymoshenko's own actions or choices. Observations Submitted by the Government of Ukraine, *Tymoshenko v. Ukraine*, App. No. 49872/11, at ¶ 9 (Eur. Ct. H.R. 2011). The conditions of Tymoshenko's detention are beyond the scope of our review.

509 CPC Art. 148.

510 *Id.*; Aug. 5, 2011 Court Order at 2.

511 The translation of the CPC provided to us by the Government states that custody shall only be imposed based on a "motivated decision" by the judge. We believe this to be an imprecise translation, however, and think the intention was to say that the judge's decision must be "reasoned."

512 CPC Art. 165.

513 Trial Transcript at 29 (Aug. 5, 2011).

514 *Id.* at 27.

orders."[515] At that time, Judge Kireyev denied the petition, stating that, while grounds to modify the restraining measures did exist, the Court had not yet exhausted all possible options for ensuring Tymoshenko's compliance with proper procedural rules.[516]

The prosecution renewed its petition for Tymoshenko's detention on August 5, during the testimony of Ukrainian Prime Minister Mykola Azarov.[517] On that day, Tymoshenko was not present when the day's proceedings were opened at 9:00 a.m. Her defense counsel, Yuriy Sukhov, moved for a recess until 9:30 a.m. The Court granted the recess.[518] Tymoshenko was present when court resumed after the recess at 9:30 a.m. She refused to specify the reasons she was late for court, stating only that "I did not arrive in court on time for valid reasons. I cannot state these reasons. They are my reasons. If you adjourn at 8:00 p.m., that leaves nighttime for preparation, then you are wearing down our entire team. I had valid reasons. I refuse to state the reasons why I was not in court."[519]

During the day's proceedings, Tymoshenko protested the fact that Azarov testified in Russian, rather than Ukrainian, and, although she previously had not requested a translator when witnesses testified in Russian, she now asked for a translator on multiple occasions during Azarov's testimony.[520] Her requests were denied. The judge noted that other witnesses had testified in Russian without drawing objections from

---

515 Trial Transcript at 1 (Jul. 28, 2011).

516 Trial Transcript at 27 (Aug. 5, 2011).

517 *Id.*

518 *Id.* at 1.

519 *Id.*

520 *Id.* at 12-14.

the defense or a request for a translator.[521] Judge Kireyev also overruled questions Tymoshenko posed to Azarov on at least 23 occasions, stating that Tymoshenko's questions were irrelevant to the topics at issue, were abusive, or contained improper "judgmental statements."[522] For example, on one occasion, Tymoshenko said to Azarov, "[T]he entire country is already weeping, with your knowledge, and with cheap Pampers and condoms."[523] Several times, Azarov responded by insulting Tymoshenko.[524] Azarov also posed a number of argumentative questions to Tymoshenko.[525] On one occasion, Judge Kireyev asked Azarov "to address participants in the proceedings with tolerance."[526]

Following one of several combative exchanges between Tymoshenko and Azarov, Judge Kireyev informed Tymoshenko that she was "interfering with the establishment of the truth in the case."[527] At this time, Prosecutor Liliya Frolova advanced a petition to modify Tymoshenko's restraining measures, stating that the petition "pertain[ed] directly to the witness questioning" then underway.[528] The prosecutor later stated that she moved for modification in large part because "Tymoshenko prevented the cross-examination of

---

521 *Id.* at 14.

522 *Id.* at 15-27.

523 *Id.* at 14.

524 *Id.* at 15-17.

525 *Id.*; CPC Art. 300 (setting forth the circumstances under which a defendant is to be examined and identifying as individuals who may examine a defendant "the prosecutor, community accuser, victim, civil plaintiff, civil defendant, their representatives, defense counsel, and community defense counsel . . . other defendants . . . judge and people's assessors"); Trial Transcript at 16 (Aug. 5, 2011).

526 Trial Transcript at 17 (Aug. 5, 2011).

527 *Id.* at 26.

528 *Id.* at 17.

witnesses [and] asked the witnesses to provide the court with the relevant documents indicating her awareness of the availability of the relevant documents to the witnesses and . . . her attempts to induce witnesses to give evidence in her favor."[529] Judge Kireyev agreed to consider the petition following Azarov's questioning.[530]

At the conclusion of Azarov's testimony, defense counsel Sukhov raised objections to rulings the judge had made during the questioning. Sukhov claimed that he was deprived of the right to ask questions and that Tymoshenko was "virtually deprived" of the right to do so during the session.[531] The judge rejected the defense counsel's contention. At this time, Tymoshenko apparently refused to stand in speaking to the judge and stated: "[W]hen you become a court, I'll stand. As long as you're just a mummer, I'll remain seated. . . . [I]f you like it so much when I casually stand up, then this is already a total crisis."[532]

During the subsequent consideration of the petition for modification of the restraining measures, Sukhov stated that:

> exercising the right to ask a witness questions cannot be grounds for modifying restraining measures. There are no other grounds to modify the restraining measures. . . . Tymoshenko is not hiding from prosecution. . . . She is not influencing witnesses, other than the fact that she is exercising her procedural right and asking them questions. Asking a witness any kind of question cannot… be seen as an attempt to interfere with the establishment of truth in the case. This in no way can be seen as dragging out the trial.[533]

---

529 On the reasons to alter a measure of restraint for Yulia Tymoshenko at 1 (document provided to Skadden by the OPG).

530 Trial Transcript at 17 (Aug. 5, 2011).

531 *Id.* at 27.

532 *Id.*

533 *Id.* at 28.

Tymoshenko, in turn, responded to the prosecution's petition by calling it "a very vivid example of lawlessness, immorality, and the infringement of human rights and freedoms."[534]

Sukhov also stated that the measures imposed against Tymoshenko on April 13 had expired well before the indictment against her was entered on May 24.[535] Tymoshenko requested leave to enter a counter-petition to rescind the existing restraint measures.[536] Judge Kireyev stated that she would have the right to enter a new petition following his ruling on the prosecution's petition for detention.[537] He recessed to consider the petition. A little more than an hour later, he announced that he had decided to change Tymoshenko's restraining measures and place her in custody.[538] He issued an order explaining his reasoning:

> Both during the pretrial investigation in this case and in the course of court proceedings the defendant Yulia V. Tymoshenko has systematically disrupted court order, disobeyed the presiding judge's orders, shown contempt through her statements and expressions for other parties to the trial and for the court, has intentionally delayed the trial, and commits actions during court sessions intended to interfere with investigation, in particular, interfering with examination of witnesses. . . . [T]he court concludes that the defendant, if allowed to remain free, may fail to appear in court and refuse to follow court orders and will interfere with the progress of the trial, and therefore deems it necessary to change the restraining measure. . . . [T]he restraining measure . . . [is] changed from not leaving her place of residence to custody.[539]

---

534 *Id.*

535 *Id.* at 29; *see* CPC Art. 148 ("Whenever a measure of restraint is impose [sic] on the suspect, charges should be brought against him/her within 10 days after such measure of restraint has been ordered.").

536 Trial Transcript at 29 (Aug. 5, 2011).

537 *Id.*

538 *Id.*

539 Aug. 5, 2011 Court Order at 2.

Between August 5 and September 5, Tymoshenko and her defense team submitted at least thirteen motions to change her restraint measures back to release on her own recognizance. The court considered and denied all of these motions.[540] The OPG provided Skadden with several written opinions from Judge Kireyev rejecting such motions. One such opinion notes that Tymoshenko, her attorneys, and members of non-governmental organizations had requested that Tymoshenko be granted bail. Tymoshenko's counsel argued that after her detention, "the defendant does not demonstrate contempt of the court and witnesses."[541] Members of the prosecution objected to the motion, and Judge Kireyev dismissed it on the following grounds:

> The motions of the defense lawyer and the submitted petitions do not contain, and the court did not find circumstances proving availability of grounds to change the restrictive measures applied towards the defendant from detention in custody to personal bail and bail of a non-governmental organization.[542]

Another opinion, issued four days later, contains an identical explanation for Judge Kireyev's decision to deny the motion.[543]

On August 12, the Kyiv City Court of Appeal reviewed an appeal filed by Tymoshenko's defense regarding the August 5 detention order. The Court of Appeal refused to consider the appeal, finding that, under the CPC, a decision regarding change of a restraint measure is not subject to "separate appeal."[544] The Court of Appeal stated

---

[540] Resolution, *Ukraine v. Tymoshenko*, No. 1-657/2011 at 189 (Sept. 5, 2011).

[541] Resolution, *Ukraine v. Tymoshenko*, No. 1-657/2011 at 192 (Aug. 11, 2011).

[542] *Id.* at 193.

[543] Resolution, *Ukraine v. Tymoshenko*, No. 1-657/2011 at 57 (Aug. 15, 2011).

[544] Resolution, *Tymoshenko v. Ukraine*, Kyiv City Court of Appeal, No. 10/2690/1461/2011 at 2 (Aug. 12, 2011).

that the order was based on the "commonly established practice of prolonging permitting to extend pre-trial detention until the end of the proceedings."[545]

Judge Kireyev rejected another motion on September 5. In requesting Tymoshenko's release, her counsel had "refer[red] to the fact that at present the court has completed the stage of the court proceeding."[546] The prosecutors objected, "stating that at present the need of the restrictive measure applied towards the defendant has not disappeared stating that the defendant continues to obstruct finding of the truth in the case." [547] Judge Kireyev repeated his prior conclusion that he "did not find circumstances" justifying Tymoshenko's release.[548] He also "specifically noted that after the court changed the restrictive measure towards the defendant but in the court hearing of 5 September 2011 the latter continues to express herself with contempt of the court and the participants of the court hearing, does not react to remarks and awards of the presiding judge in the case, including during the witness evidence."[549]

The trial concluded on September 30, and the Court issued its judgment of conviction and sentence on October 11. Tymoshenko remained in custody during this period.[550]

---

[545] Tymoshenko Application at p. 2.

[546] Resolution, *Ukraine v. Tymoshenko*, No. 1-657/2011 at 188 (Sept. 5, 2011).

[547] *Id.*

[548] *Id.* at 189.

[549] *Id.*

[550] The OPG informed Skadden that neither party was legally permitted to contact the judge during the deliberation period following conclusion of the trial, such that Tymoshenko would not have been able to object to her continued detention during that period.

2. Due Process Standards

A fundamental component of due process is the principle that a defendant is presumed innocent until proven guilty. For this reason, the pre-conviction deprivation of a defendant's liberty is disfavored and must be supported by case-specific factors. Moreover, even where initially proper, such detention may continue only so long as circumstances continue to justify it. We look here both at the initial imposition and continued duration of detention. We also consider the right of the detainee to appeal.

a. Initial Imposition of Detention

In recognition that a criminal defendant is presumed innocent until proven guilty, American law has long upheld a "right to freedom before conviction," which "permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction."[551] For the same reason, the United States Constitution commands that "[e]xcessive bail shall not be required."[552]

However, pre-conviction detention is appropriate in certain limited circumstances. For example, detention may be warranted where the defendant is unable to "giv[e] adequate assurance that he will stand trial and submit to sentence if found guilty,"[553] and it may be warranted if the defendant poses a demonstrable danger to public safety. For federal crimes, the United States has adopted a law that permits pre-conviction detention if, after an adversary hearing, the Government demonstrates to a judicial officer by clear

---

[551] *Stack v. Boyle*, 342 U.S. 1, 4 (1951); *see Hudson v. Parker*, 156 U.S. 277, 285 (1895) ("The statutes of the United States have been framed upon the theory that a person accused of crime shall not, until he has been finally adjudged guilty in the court of last resort, be absolutely compelled to undergo imprisonment or punishment, but may be admitted to bail, not only after arrest and before trial, but after conviction, and pending a writ of error.").

[552] U.S. Const. amend. VIII. The Ukrainian Constitution similarly affords criminal defendants a presumption of innocence. Constitution of Ukraine Art. 62 (May 25, 2006).

[553] *Stack*, 342 U.S. at 4.

and convincing evidence that no release conditions "will reasonably assure the appearance of the person as required and the safety of any other person and the community."[554] In justifying any such detention, the judicial officer may not rely on generalities; instead, the judicial officer "must include written findings of fact and a written statement of reasons for a decision to detain."[555]

United States standards also permit immediate, temporary imprisonment as a punishment for direct contempt of court, or contempt committed in the presence of the judge, including for misbehavior that "obstruct[s] the administration of justice."[556] The judicial ability to punish summarily and without a hearing for contempt of court has long been recognized.[557] It satisfies "the need for immediate penal vindication of the dignity of the court,"[558] and permits the judge to act without delay to put a stop to disruptive

---

[554] 18 U.S.C. § 3142(e)-(f).

[555] *United States v. Salerno*, 481 U.S. 739, 752 (1987) (citing 18 U.S.C. § 3142(i)).

[556] 18 U.S.C. § 401. The entire text of 18 U.S.C. § 401 reads:

> A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—
>
> (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
>
> (2) Misbehavior of any of its officers in their official transactions;
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

Id.; *see* Fed. R. Crim. Proc. 42(b) (permitting "criminal contempt" proceedings). The use of the summary contempt power is proper only for "charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent 'demoralization of the court's authority' before the public." *Pounders v. Watson*, 521 U.S. 982, 988 (1977) (per curiam).

[557] *In re Terry*, 128 U.S. 289, 307 (1888) ("If the contempt be committed in the face of the court, the offender may be instantly apprehended and imprisoned, at the discretion of the judges, without any further proof or examination.") (quotation marks omitted).

[558] *Cooke v. United States*, 267 U.S. 517, 536 (1925).

conduct.[559] Nevertheless, there are many limits on the court's ability to use this summary power—which "always, and rightly, is regarded with disfavor,"[560] and which is reserved for "exceptional circumstances."[561] Case law suggests that summary contempt generally is inappropriate to punish tardiness, but may be appropriate if that tardiness is a result of reckless or willful disregard for court orders.[562]

The Convention similarly guarantees that "[e]veryone charged with a criminal offence shall be presumed innocent until proved guilty according to law,"[563] and limits the circumstances in which a defendant may be confined prior to conviction. Article 5 §1 of the Convention provides that:

> Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: . . . (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law; [and] (c) . . . when it is reasonably considered necessary to prevent [the defendant from] committing an offence or fleeing after having done so.[564]

Under ECtHR standards, a court's decision to detain an individual prior to and during trial is reviewed against a reasonableness standard, which is applied based on the facts of

---

559 *United States v. Wilson*, 421 U.S. 309, 319 (1975).

560 *Sacher v. United States*, 343 U.S. 1, 8 (1952).

561 *Harris v. United States*, 382 U.S. 162, 164 (1965).

562 *In re Gates*, 600 F.3d 333, 339 (4th Cir. 2010); *In re Contempt Order*, 441 F.3d 1266 (10th Cir. 2006) (summary contempt order was abuse of discretion when attorney was five minutes late for hearing); *United States v. KS & W Offshore Eng'g, Inc.*, 932 F.2d 906, 908-09 (11th Cir. 1991) (noting that attorneys charged with contempt for failing to appear, absent extraordinary circumstances, generally should not be made to respond in summary contempt proceeding); *but see United States v. Baldwin*, 770 F.2d 1550 (11th Cir. 1985) (use of the summary power was proper where the lawyer had told the court in advance that he would not be present on a religious holiday and that he would not obey the court's order to appear); *In re Niblack*, 476 F.2d 930 (D.C. Cir. 1973) (attorney's conduct in arriving one hour and 50 minutes late for scheduled hearing, was in reckless and willful disregard of order that he appear promptly for hearing).

563 Convention Art. 6.

564 Convention Art. 5, §1.

each case.[565] Where detention is sought "in order to secure the fulfillment of [an] obligation prescribed by law," the detaining authority must identify a specific, unfilled obligation; "the arrest and detention must be for the purpose of securing its fulfillment and not punitive in character. As soon as the relevant obligation has been fulfilled, the basis for detention under Article 5 § 1(b) ceases to exist."[566] The ECtHR also has noted that "a balance must be drawn between the importance in a democratic society of securing the immediate fulfillment of the obligation in question, and the importance of the right to liberty."[567] Circumstances justifying a defendant's initial detention include a risk of interference with the course of justice, the risk that the defendant may abscond, or the risk of re-offending.[568]

b. Duration of Detention

Even where detention is initially proper, the length of its continued imposition also must be justified. To determine whether the duration of pre-conviction detention has become unconstitutionally excessive, American law requires a court to examine "its length of detention, the extent of the prosecution's responsibility for any delay of trial, the gravity of the charges, and the strength of the evidence upon which detention was based, *i.e*. the evidence of risk of flight and danger[ousness]."[569] Courts look to the facts of the particular case in determining whether pre-conviction custody was permissible.

---

565 *Idalov v. Russia*, App. No. 5826/03, at ¶ 139 (Eur. Ct. H.R. 2012).

566 *Vasileva v. Denmark*, App. No. 52792/99, at ¶ 36 (Eur. Ct. H.R. 2003).

567 *Id.* at ¶ 37.

568 *Aleksanyan v. Russia*, App. No. 46468/06, at ¶¶ 8, 182 (Eur. Ct. H.R. 2008).

569 *See United States v. El-Gabrowny*, 35 F.3d 63, 65 (2d Cir. 1994); *United States v. El-Hage*, 213 F.3d 74, 79 (2d Cir. 2000); *United States v. Watson*, No. 11-2338, 2012 WL 1237785, at *3 (6th Cir. Apr. 12, 2012).

For instance, a defendant's pre-conviction detention of up to 33 months was found acceptable where the detaining court made specific findings that the defendant was extremely dangerous and a particularly serious flight risk.[570] In another case, however, a shorter period of detention was found to be excessive given the availability of alternative procedures, "including a prohibition against leaving [the jurisdiction], daily reporting to an appropriate government official and the use of a radio bracelet warning system."[571]

The ECtHR has stated that, when deciding whether a person should continue to be detained during trial, the authorities are obliged to consider "alternative measures of ensuring [the defendant's] appearance at trial."[572] Continued detention can be justified only if there are "specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention."[573] The ECtHR also has stated that "the duration of detention is a relevant factor" in achieving balance between "the importance in a democratic society of securing the immediate fulfillment of the obligation in question, and the importance of the right to liberty."[574] Article 5 § 3 of the convention provides that:

> Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article [regarding detention of persons believed to be a flight risk] shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial

---

570 *El-Hage*, 213 F.3d at 77, 81.

571 *United States v. Ojeda Rios*, 846 F.2d 167, 169 (2d Cir. 1988).

572 *Idalov v. Russia*, App. No. 5826/03, at ¶ 140 (Eur. Ct. H.R. 2012).

573 *Id.* at ¶ 139; *Bykov v. Russia*, App. No. 4378/02, at ¶ 62 (Eur. Ct. H.R. 2009).

574 *Vaslineva v. Denmark*, App. No. 52792/99, at ¶ 37 (Eur. Ct. H.R. 2003).

> within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.[575]

The ECtHR "frequently" finds a violation of this provision where courts have continued a defendant's detention "relying essentially on the gravity of the charges and using a stereotyped formula, without addressing specific facts or considering alternative preventive measures."[576]

c. Appeal of Detention Measures

Under U.S. law, a court's decision to detain a federal criminal defendant before conviction may normally be immediately appealed,[577] and so may a court's decision to detain the defendant via a summary contempt order.[578] Article 5 § 4 of the Convention provides:

> Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.[579]

This review must have "a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question."[580] Where the authority that detained the defendant is itself a court, § 4 does not appear to require some further form of appellate review. The ECtHR has determined that a violation had taken place where the defendant's appeals regarding the lawfulness of his detention were not decided

575 Convention Art. 5, §3.

576 *Idalov v. Russia*, App. No. 5826/03, at ¶ 147 (Eur. Ct. H.R. 2012).

577 *See* 18 U.S.C. § 3145; *see also Salerno*, 481 U.S. at 752 (relying on the existence of "immediate appellate review" in upholding the Bail Act).

578 *See United States v. Engstrom*, 16 F.3d 1006, 1007 (9th Cir. 1994); Fed. R. App. P. 9.

579 Convention Art. 5, §4.

580 *Idalov v. Russia*, App. No. 5826/03, at ¶ 161 (Eur. Ct. H.R. 2012).

"speedily" and he was not afforded an opportunity to be present at a number of the appeal hearings.[581] The ECtHR has found violations of § 4 in cases against Ukraine based on the refusal by district and appeals courts to deal with the applicant's arguments.[582] The ECtHR also has stated in numerous opinions that Ukrainian law's failure to require reviewing courts to state particular reasons for the lawfulness of continued detention after the completion of pretrial investigation does not satisfy the requirements of § 4.[583]

3. Analysis

Judge Kireyev stated that he placed Tymoshenko into custody to ensure that she would not interfere with an orderly trial.[584] Specifically, the judge emphasized his view that Tymoshenko had "systematically disrupted court order, disobeyed the presiding judge's orders, shown contempt . . . for other parties . . . and for the court, . . . intentionally delayed the trial, and commit[ted] actions during court sessions intended to interfere with investigation, in particular, interfering with examination of witnesses."[585] The Court noted that Tymoshenko also refused to provide her residential address to the

---

581 *Id.* at ¶¶ 151, 160, 164.

582 *Pleshkov v. Ukraine*, App. No. 37789/05, at ¶ 42 (Eur. Ct. H.R. 2011). In that case, a defendant was detained during trial for similar reasons as Tymoshenko. Specifically, he was placed into custody to secure the "proper conduct" of court proceedings, because the court and prosecutor believed that the applicant was "putting pressure" on testifying witnesses. The court subsequently denied the defendant's requests to change the preventive measures back to bail because of "the serious nature of the charges against [him] and an inherent risk of his absconding." *Id.* at ¶¶ 9, 11. The ECtHR stated that these decisions violated Article 5 § 4 because they were "limited to the refusal to deal with the applicant's arguments."

583 See, e.g., *Molodorych v. Ukraine*, App. No. 2161/02, at ¶ 108 (Eur. Ct. H.R. 2010).

584 Aug. 5, 2011 Court Order.

585 *Id.* at 2.

Court and refused to confirm receipt of notification of court sessions.[586] Judge Kireyev stated that all these factors, as well as Tymoshenko's failure to appear promptly at 9:00 a.m. on the morning of August 5, 2011, indicated that Tymoshenko, "if allowed to remain free, may fail to appear in court and refuse to follow court orders and will interfere with the progress of the trial."[587]

Judge Kireyev stressed what he found to be Tymoshenko's disruptive behavior in court. Disruptive behavior during trial is a permissible reason for detaining a defendant under both ECtHR and U.S. standards, and, as discussed above, is often characterized as interference with the course of justice. In a recent case, for example, the ECtHR stated that defendant's attempts to draw out the proceedings, which the trial court classified as an "attempt to interfere with the establishment of the truth and [which] demonstrated insolent disrespect towards the court," and the gravity of the charges at issue were factors that "might have initially justified his detention."[588]

On August 5, Judge Kireyev warned Tymoshenko several times that her behavior towards Azarov was "dragging out the case and interfering with the establishment of the

---

[586] *Id.* In arguing against the prosecutor's petition, Tymoshenko had stated that her home address was contained in the court's files and that she had been present in court each day, with only a single incident of lateness on August 5. Trial Transcript at 28 (Aug. 5, 2011).

[587] Aug. 5, 2011 Court Order. In his judgment, Judge Kireyev stated that because of Tymoshenko's actions in court, her refusal to provide her address and failure to appear in court on time, among other considerations, he concluded that "if free, the defendant may evade trial and the enforcement of procedural rulings and interfere with the establishment of the truth in the case." Trial Transcript at 31 (Aug. 5, 2011).

[588] *Idalov v. Russia*, App. No. 5826/03, at ¶¶ 143-44 (Eur. Ct. H.R. 2012). The issue of former heads of state rejecting the legitimacy of a judicial proceeding through contemptuous trial behavior is an increasingly frequent and vexing issue for the International Criminal Court. *See* Marlise Simons, *As a Defendant Bullies and Boasts, Questions Arise on a Court's Limits*, NEW YORK TIMES, Apr. 16, 2012, http://www.nytimes.com/2012/04/17/world/europe/in-the-hague-a-debate-on-grandstanding.html ("[T]he question that keeps coming up among judges and lawyers is how to adjust procedures to limit the grandstanding and bullying while preserving standards of justice. The answers have been widely different.").

truth."[589] Tymoshenko also was openly disrespectful of Judge Kireyev that day. For example, she told Judge Kireyev that, if he precluded her questions on a particular subject, "I'll know that you are all in the same gang here"; she accused the judge of engaging in "concealment of corruption;" she announced that "corruption will continue to be covered up by this court;" and she said that she would not stand because the judge was "just a mummer," rather than "a court."[590] She also had assailed the Court on multiple occasions before that.[591] The record does not indicate that the judge expressly told Tymoshenko that this could or would result in the imposition of detention as a restraining measure, which under U.S. law in the summary contempt context "is favored before the power of the court is exercised."[592] (It should be noted, however, that, in response to the prosecution's previous petition for custody, Judge Kireyev had said that he would not order it at that time because he had not yet exhausted other alternatives.)[593] Such explicit warning is not required, however, and certain of Tymoshenko's actions—notably, the repeated insults she directed at Judge Kireyev[594] and her continued refusal to comply with the Court's order that she stand up when addressing the Court—likely would have

---

589 Trial Transcript at 15 (Aug. 5, 2011).

590 *Id.* at 15, 18, 20, 27.

591 *See, e.g.*, Trial Transcript at 13 (July 6, 2011); Trial Transcript at 3 (July 15, 2011); Trial Transcript at 13 (July 28, 2011).

592 *See, e.g.*, *United States v. Powers*, 629 F.2d 619, 624 (9th Cir. 1980).

593 Trial Transcript at 27 (Aug. 5, 2011).

594 *See, e.g.*, *Bloom v. Illinois*, 391 U.S. 194, 202 (1968) ("Even when the contempt is not a direct insult to the court or judge, it frequently represents a rejection of judicial authority, or an interference with the judicial process or with the duties of officers of the court.").

merited a summary contempt finding under Western standards, possibly including a limited period of incarceration.[595]

In contrast to the record of contumacious conduct by Tymoshenko, the Court's suggestion that Tymoshenko presented a flight risk, or a risk of non-attendance, is problematic under the record of this case. As noted above, the Court explained that Tymoshenko refused to provide her residential address to the Court, refused to confirm receipt of notification of court sessions, and was late for court on August 5 while refusing to explain her tardiness. However, Tymoshenko appears to have attended and arrived on time for each prior court session, and she was late by less than 30 minutes on the day that the detention measures were imposed.[596] She also claimed that her residential address was contained in the Court's case file.[597] While Judge Kireyev noted that documents mailed to this address were returned to the Court, indicating that the address was incorrect, there do not appear to be any specific grounds for believing Tymoshenko would flee or not attend, particularly given the absence of any statements to that effect and the fact that she continued to make daily appearances in court.[598]

Even if the initial imposition of pre-conviction detention was justified based on Tymoshenko's contumacious behavior, Western courts would criticize the trial court's lack of reasoned explanations as to why continued detention was warranted. Extending her detention beyond the end of the trial until the announcement of the judgment of

---

595 *See United States v. Wilson*, 421 U.S. 309, 315-16 (1975) ("Respondents' contumacious silence, after a valid grant of immunity followed by an explicit, unambiguous order to testify, impeded the due course of . . . trial perhaps more so than violent conduct in the courtroom.").

596 Tymoshenko App. at ¶¶ 78-79.

597 *Id.* at 9.

598 *See generally* Aug. 5, 2011 Court Order.

conviction and sentence is particularly problematic. The ECtHR recently found a defendant's continued detention impermissible when the domestic court based its decisions to continue holding the defendant in custody on the gravity of the charges against him, but consistently failed to consider his arguments regarding his permanent place of residence and his stable family relationship.[599] Further, the domestic court also failed to consider that "he had not absconded from justice, and that the State's examination of the case had become dilatory."[600] The ECtHR also has found a violation of Article 5 § 3 when the domestic court simply listed its grounds—gravity of the charges, the likelihood of flight, and potential for obstruction of justice and exertion of pressure on witnesses—in at least ten denials of a defendant's request for release, without substantiating these grounds with facts from the particular case at hand.[601] And the ECtHR has found violative a trial court's failure to link any of the facts of the case with the reasons upon which they justified prolonging detention.[602]

In the instant matter, Judge Kireyev denied Tymoshenko's repeated motions to end her detention. In at least two of his written opinions, Judge Kireyev did not find specific facts or give specific reasons in support of her continued detention, stating only that he "did not find circumstances" justifying her release. Another opinion stated that Tymoshenko "continue[d] to express herself with contempt" of the court and witnesses and that she was unresponsive to the judge's rulings, but it did not include greater detail. In the United States, a judge would be required to provide detailed and specific findings

[599] *Idalov v. Russia*, App. No. 5826/03, at ¶ 146 (Eur. Ct. H.R. 2012).

[600] *Id.*

[601] *Bykov v. Russia*, App. No. 4378/02, at ¶ 65 (Eur. Ct. H.R. 2009).

[602] *Aleksanyan v. Russia*, App. No. 46468/06, at ¶¶ 184, 190 (Eur. Ct. H.R. 2008).

in support of a decision to continue the defendant's detention. At the very least, in light of Judge Kireyev's primary stated rationale for the custody—ensuring an orderly trial—it seems especially difficult to justify continuing her imprisonment after the trial had concluded (on September 30) and before the judgment of conviction had been rendered (on October 11). Tymoshenko's continued detention during this period, without adequate explanation or justification, calls into question whether Tymoshenko was inappropriately deprived of liberty prior to her conviction.

Tymoshenko also has protested the open-ended nature of her detention under Article 5 § 3.[603] The ECtHR has emphasized in finding violations of that section that the failure to define an end date to a detention was problematic, "implying that [the defendant] would remain in detention until the end of the trial."[604] In deciding to extend the detention without apparent limit, the domestic court "did not evolve to reflect the developing situation and to verify whether [the grounds for detention] remained valid at the advanced stage of the proceedings."[605]

Tymoshenko's application to the ECtHR also protested the Kyiv Court of Appeal's decision not to review her detention, claiming that it violated her right under Article 5 § 4 of the Convention to a "speed[y]" review. The OPG argues that an appeal from a trial court's detention decision is not required, and that in any event Article 5 § 4 was satisfied by the examination of the Pechersky District Court, where Judge Kireyev considered multiple petitions requesting a change in restraining measures during this

---

603 Tymoshenko Application at ¶ 121.

604 *Bykov v. Russia*, App. No. 4378/02, at ¶ 65 (Eur. Ct. H.R. 2009).

605 *Id.*

time.[606] As noted above, however, when the detaining authority is a court, it is unclear whether the Convention requires the further availability of judicial review. In any event, appellate review of Tymoshenko's detention would have been provided under American law and is not provided for under Ukrainian law.

F. Representation by Counsel

During the course of the criminal proceedings, Tymoshenko was represented by a number of different defense attorneys. On several occasions, Tymoshenko appeared without counsel during court sessions, including on July 15—when Tymoshenko was removed from the court room—and on July 27, 28, and 29.[607]

In her ECtHR appeal, Tymoshenko argues that the Court violated her right to adequate representation. Specifically, she alleges that her rights were violated by her lack of legal representation during testimony and examination of prosecution witnesses during the trial between July 26 and August 1.[608] Tymoshenko further challenges Judge Kireyev's refusal to adjourn court proceedings in order to allow her to find new legal representatives.[609] She also alleges interference by police officers with the defense team's ability to confer with her in private.[610]

---

[606] Observations Submitted by the Government of Ukraine, *Tymoshenko v. Ukraine*, App. No. 49872/11, at ¶¶ 136-46 (Eur. Ct. H.R. 2011).

[607] Tymoshenko Application at ¶ 142; Trial Transcript (Jul. 15, 2011).

[608] *Id.* at ¶ 149.

[609] *Id.* at ¶¶ 142, 149.

[610] *Id.* at ¶¶ 138-44.

1. Factual and Legal Background

Criminal defendants are assured under the CPC of a right to "have a defense counsel,"[611] and in particular to have counsel present during court sessions.[612] Further, Article 289 provides:

> If prosecutor or defense counsel does not appear in court session and there is no possibility to replace them with other individuals, hearings of the case should be postponed. Defense counsel who has not appeared in court session may be replaced only upon defendant's consent. . . . The court informs appropriate authorities on the prosecutor or defense counsel's non-appearance.[613]

During the course of Tymoshenko's criminal proceedings, she was represented by a number of different defense attorneys: Bogdan Ferenc,[614] Sergiy Vlasenko,[615] Mykola Tytarenko,[616] Mykola Siryy,[617] Oleksandr Plahotnyuk,[618] and Yuriy Sukhov.[619] Vlasenko was Tymoshenko's lead defense attorney, serving as counsel from April 11 through June 28. Vlasenko was not present in court for several days during early July, including sessions held on July 4, 6, 7, 8, 11, and 15.[620] On July 4, Tymoshenko told the Judge that Vlasenko "had to depart today on a business trip to another country in order to have

---

611 CPC Art. 43.

612 CPC Art. 263(2).

613 CPC Art. 289.

614 Ferenc represented Tymoshenko during a portion of pretrial investigation, from April 20, 2011 until April 27, 2011. Ruling in the Name of Ukraine, *Tymoshenko v. Ukraine*, Kyiv City Court of Appeal at 25 (Dec 23, 2011).

615 Tymoshenko Application at ¶ 9.

616 *Id.* at ¶¶ 26, 41.

617 *Id.*

618 *Id.*

619 *Id.* at ¶ 71.

620 *Id.* at ¶¶ 29-43.

necessary consultations and meetings" with a consulting firm "to get an audit relating to all circumstances of" her case.[621] She said the trip would "[m]ost likely . . . last until the week's end."[622]

Between July 4 and July 11, Tymoshenko was represented in court only by Tytarenko, who had been admitted as defense counsel on June 29.[623] Tytarenko moved on July 4 and 6 for adjournment based on Vlasenko's absence and his own unfamiliarity with the case file.[624] Judge Kireyev partially granted only one of these motions, granting one and a half days' adjournment on July 4 in order for Tytarenko to review the case file.[625] Tytarenko also moved for adjournment on July 8, citing illness caused by exhaustion.[626]

On July 11, Tytarenko again moved for adjournment based on his inability to "provide legal services at the satisfactory level without having had reasonable time to study the applicant's case-file."[627] Tytarenko's motion was rejected by Judge Kireyev.[628] Tymoshenko then submitted an application announcing dismissal of Tytarenko, adding that "[i]f you allow the necessary time for familiarization with the materials I will not

---

621 Trial Transcript at 1-2 (July 4, 2011).

622 *Id.* at 2.

623 Trial Transcript at 6-7 (July 4, 2011). It appears that Tytarenko was officially admitted on June 25, but was not notified of his admission until June 29. *Id.*

624 Tymoshenko Application at ¶¶ 29, 31, 33.

625 *Id.* at ¶¶ 28-31.

626 *Id.* at ¶ 29.

627 *Id.* at ¶¶ 29, 33, 40.

628 *Id.* at ¶ 39.

have to reject him."[629] Tytarenko told the Court that, in light of the Judge's refusal to give him sufficient time to review the case file, he was "unable to comply with ethical norms" and was therefore compelled to withdraw.[630] The prosecution noted Vlasenko's continued absence and Tymoshenko explained that he was gathering evidence in support of her case.[631]

Judge Kireyev then revoked Tytarenko's power of attorney. The trial transcript reflects that the judge characterized this revocation as caused by Tymoshenko's refusal to be represented by Tytarenko.[632] Judge Kireyev later initiated disciplinary measures against Tytarenko based on alleged improper performance of his duties as defense counsel.[633]

After Tytarenko's power of attorney was revoked, Judge Kireyev granted a three-day adjournment to allow Tymoshenko to identify new defense counsel.[634] Tymoshenko announced that Vlasenko would be "collecting information and facts" until July 15 but would "definitely attend" court proceedings on that day.[635] As mentioned, however, Vlasenko did not appear in court when proceedings recommenced on July 15.[636]

---

629 Trial Transcript at 11 (July 11, 2011).

630 *Id.*

631 *Id.* at 12-14

632 *Id.* at 15.

633 On July 29, Tymoshenko stated that "Mykola Tytarenko, who is now in the courtroom, has been allowed 1.5 days to study the case evidence and a disciplinary action was illegally initiated against him." Trial Transcript at 3 (July 29, 2011); Ruling in the Name of Ukraine, *Tymoshenko v. Ukraine*, Kyiv City Court of Appeal at 10, 33 (Dec 23, 2011).

634 Trial Transcript at 18 (July 11, 2011).

635 *Id.* at 17.

636 Trial Transcript at 18 (July 15, 2011).

On that day, Judge Kireyev refused to consider the motion to admit two new attorneys, Siryy and Plakhotnyuk, as defense counsel because Tymoshenko refused to stand to enter the petition as required by Article 271 of the CPC.[637] As a result, these attorneys were not admitted until July 18.[638] Tymoshenko therefore had no legal representation during the court proceeding on July 15. As discussed in Part IV.D, *supra*, on that day Tymoshenko was removed from the courtroom, with the result that neither she nor any member of her defense was present for the remainder of the session.

Judge Kireyev justified this absence by stating that Vlasenko "ha[d] been admitted to the proceedings and the reasons for his failure to appear in court are considered unfounded by the Court, so it has been decided that the case can be tried in his absence. If . . . Vlasenko appears, he will be allowed to join the defense team. Admission of any other parties has not been considered and no motions to this effect have been filed."[639] Shortly thereafter, during the prosecution's reading of the indictment against Tymoshenko, Judge Kireyev scolded Plakhotnyuk for "interrupting the court and . . . trying to disrupt the court proceeding."[640] The judge stated that Plakhotnyuk could not "put forward any arguments since he is not a trial participant or a party," because "[n]o trial participant or party involved in the case has requested that [he] be

---

637 Tymoshenko Application at ¶¶ 43-44; Trial Transcript at 11 (July 15, 2011) ("I am prepared to read out my statement regarding the admission of the defenders who are currently present in this courtroom . . ."); Trial Transcript at 17-18 (July 18, 2011).

638 Trial Transcript at 17 (July 18, 2011).

639 Trial Transcript at 18 (July 15, 2011).

640 *Id.*

admitted."[641] Judge Kireyev subsequently ordered Plakhotnyuk removed from the courtroom.[642]

When trial resumed on July 18, Vlasenko was present.[643] At the opening of the proceedings, Judge Kireyev asked Siryy to vacate his seat at the defense bench, as he was not yet admitted to the court proceedings.[644] Vlasenko then repeatedly attempted to protest the judge's July 15 refusal to allow Tymoshenko to introduce Siryy and Plakhotnyuk as defense counsel. In order to obtain permission to make this argument, Vlasenko characterized his statement as a "response to the Presiding Judge's actions."[645] But Judge Kireyev refused to allow Vlasenko to proceed, stating that Vlasenko had not been "given the floor" and that he would later be given "a chance to make his statement."[646] Vlasenko continued to speak out, however, citing CPC Article 260 for the proposition that he was allowed to speak "when someone's rights [we]re being violated."[647] Judge Kireyev then ordered the removal of Vlasenko as defense counsel.[648]

Vlasenko protested, stating that as defense counsel it was his duty to raise "a question regarding the presence of the defense attorneys, for whose admission . . .

---

641 *Id.* at 19.

642 *Id.*

643 Trial Transcript at 1 (Jul. 18, 2011).

644 *Id.*

645 *Id.*

646 *Id.*

647 *Id.* at 2. *See* CPC Art. 260 ("If any of [the] participants to trial objects to [the] presiding judge's actions which restrict or violate their rights, such objections are entered in the record.").

648 Trial Transcript at 4 (Jul. 18, 2011). In raising the matter of removal, Kireyev stated that "Vlasenko . . . has been repeatedly admonished, warned, [and] this behavior continued from session to session." *Id.* Vlasenko responded by noting that he had been absent from court for the ten previous days. *Id.*

Tymoshenko applied in this courtroom as early as on July 15, 2011."[649] Vlasenko then noted that "[w]hen new people representing the defense arrived, of whom . . . Tymoshenko spoke for half an hour on July 15, 2011, the Court said: 'no, nobody knows who this is, please sit aside.'"[650] Vlasenko pointed out that Tymoshenko's application "for admission of Plakhotnyuk and Siryy, the defense attorneys . . . was filed today at 9:40 a.m. with the [clerk] and . . . the Court has to consider [it] as the first item on the agenda."[651] The judge rejected these arguments and removed Vlasenko from the case under CPC Article 61.[652] This left Tymoshenko without defense counsel.

Vlasenko, while consenting to vacate the defense bench, pointed out that Judge Kireyev remained obligated to consider the applications of Plakhotnyuk and Siryy and also was obligated by CPC Article 46 to grant Tymoshenko three days to find a replacement defense attorney.[653] Tymoshenko then repeatedly attempted to request consideration of her applications regarding Siryy, Plakhotnyuk, and two American defense attorneys—Mark Feldman of BDO Consulting and Roger Enock of Covington & Burling LLP.[654] Judge Kireyev, however, refused to allow Tymoshenko to make such requests due to Tymoshenko's refusal to stand to address the Court and he warned her

---

649 *Id.* at 6.

650 *Id.* at 6-7.

651 *Id.* at 7.

652 *Id.* at 8; *see* CPC Art. 61 ("A person may not be a defense counsel if he/she abuses his/her rights, obstructs establishing a truth in the case, delays investigation or trial, nor may be a defense counsel a person who breaks order in court session or ignores instructions of the presiding judges during trial."). Judge Kireyev also initiated disciplinary measures against Vlasenko. Ruling in the Name of Ukraine, *Tymoshenko v. Ukraine*, Kyiv City Court of Appeal at 10 (Dec 23, 2011).

653 Trial Transcript at 10 (July 18, 2011); *see* CPC Art. 46 (upon dismissal of counsel, the "judge or court advi[s]es the suspect, the accused, defendant of his/her right to hire another defense counsel and gives him/her therefor[e] . . . at least three days at the stage of trial.").

654 Trial Transcript at 8-10 (July 18, 2011).

that continued failure to stand could result in her removal from the courtroom.[655] Vlasenko continued to attempt to advise the Court of Tymoshenko's rights from his seat in the public viewing section. After repeated warnings by Judge Kireyev and a number of outbursts from Vlasenko—including statements such as "Come on! Sentence me to death by firing squad at once, to maintain the order" and "I do not mind! Shoot me"—Judge Kireyev ordered Vlasenko removed from the courtroom.[656] Vlasenko argued that the judge could not properly remove him under CPC Article 272, which provides:

> If . . . defense counsel . . . disregards requests of the presiding . . . judge's order and court's decision, [the court] may be adjourned whenever such violator cannot be replaced with another person without compromising the case. . . . For disobedience to presiding judge's requests or breach of order in court session, the witness, victim, civil plaintiff, civil defendant, and other citizens are liable under Article 185-3, first paragraph, of the Code of Administrative Offenses of Ukraine.[657]

Vlasenko accordingly argued that the only sanction provided for under Ukrainian law was a fine for disorderly behavior under the Administrative Offences Code.[658]

Following Vlasenko's removal, Judge Kireyev considered the motions for admission, and Siryy and Plakhotnyuk were admitted to the proceedings with the prosecution's consent.[659] Feldman and Enock, however, were not admitted because, according to Judge Kireyev, they lacked proper documentation.[660]

---

[655] *Id.* at 9.

[656] *Id.* at 11.

[657] CPC Art. 272.

[658] Trial Transcript at 10 (July 18, 2011); Defense Answers to the Questions Raised by the US Lawyers at 5.

[659] Trial Transcript at 14-15 (July 18, 2011).

[660] *Id.* at 15 ("[N]o Certificate in legal practice and advocacy was presented to the Court and no reference to the law provisions, which empower them to be a party in criminal proceedings, were presented.").

Siryy's first act upon admission was to present an application to disqualify Judge Kireyev, in part for alleged violations of Article 59 of the Ukrainian Constitution, which Siryy stated provides that "any person shall be free to choose a defender of his/her rights," and CPC Article 263-1, under which "a defendant must have a defense attorney or assume his/her own defense."[661] Siryy based the application on the events of July 15, claiming that Judge Kireyev had failed at the opening of that session either to consider Vlasenko's absence or to ask Tymoshenko whether she had new counsel to invite to the proceedings, despite the fact that "the break in the court proceedings was announced specifically to invite defense attorneys."[662] He stated that Judge Kireyev would not allow Tymoshenko to present her application on that day because of her refusal to stand, which Siryy stated "deprived her of the opportunity to make a statement on admission of her defense attorneys."[663] Siryy argued that these failures, combined with the subsequent removal of Tymoshenko herself from the courtroom, deprived her of the right to defend herself from the prosecution's charges, which were read following Tymoshenko's removal.[664] Judge Kireyev denied the motion.[665] Plakhotnyuk then moved for the Court to allow the new defense team time to review the case material, which Kireyev partially granted, adjourning the proceedings until July 22 in order to allow Siryy and Plakhotnyuk to review the case file.[666]

---

661 *Id.*

662 *Id.* at 16; Defense Answers to the Questions Raised by the US Lawyers at 3.

663 Trial Transcript at 16 (July 18, 2011).

664 *Id.*

665 *Id.* at 21.

666 *Id.* at 30; Tymoshenko Application at ¶ 50.

On July 25, Plakhotnyuk was not present when proceedings began. He had submitted a motion to postpone the case "due to his engagement in another case examination."[667] Judge Kireyev denied the motion.[668] On the same day, Siryy asked the Court to limit police presence in the courtroom, complaining that the guards interfered with his ability "to communicate confidentially" with Tymoshenko.[669] Judge Kireyev denied this motion.[670]

On July 26, Siryy and Plahotnyuk submitted a complaint to the Court regarding the lack of time they had been given to study the 4,000-page case file and regarding the lack of preparation time they were given each day, stating that this caused "impossibility of providing legal assistance" to Tymoshenko.[671] The Court dismissed this complaint.[672] According to Tymoshenko, this "forced" her to refuse the assistance of Plahotnyuk and Siryy—because "the court made impossible . . . compliance with the obligations of the defense"[673]—and both attorneys were then removed at her request.[674] Judge Kireyev also initiated disciplinary measures against Siryy and Plakhotnyuk.[675]

---

667 Trial Transcript at 1 (July 25, 2011).

668 *Id.*

669 *Id.* at 3.

670 Tymoshenko Application at ¶ 57.

671 *Id.* at ¶¶ 60, 141.

672 *Id.*

673 Defense Answers to the Questions Raised by the US Lawyers at 8.

674 Tymoshenko Application at ¶ 60.

675 *Id.*; Ruling in the Name of Ukraine, *Tymoshenko v. Ukraine*, Kyiv City Court of Appeal at 10-11 (Dec 23, 2011).

Subsequent to this revocation, Tymoshenko moved for adjournment to find new legal assistance, but the motion was denied.[676] She also moved for adjournment in order to find new legal representation on July 27 and July 29.[677] The Court denied these motions.[678] On July 28, she requested admission of Vlasenko, Feldman, and Enock as defense counsel, but Judge Kireyev denied her request.[679] On July 29, she again moved for the admissions of Vlasenko and Enock, but the Court denied the motion. Judge Kireyev stated that "the defendant is asking to admit to the case a person, who was rejected by the court as a defense attorney, since this person misused his rights as a defense attorney and prevented the Court from establishing the true circumstances of the case, delayed the process, showed contempt to the Court and did not comply with court orders."[680] Judge Kireyev also stated that Tymoshenko repeatedly attempted to admit "people who have been rejected by the court as defense attorneys, in particular, Sergiy Vlasenko, and citizens of foreign countries . . . although the court already considered this issue. The court arrives at the conclusion that such applications are meant to delay the case trial."[681]

Tymoshenko, therefore, was not represented by counsel during the latter part of the July 26 session, as well as during the court sessions on July 27, 28, and 29.[682] Sukhov

---

676 Tymoshenko Application at ¶ 60.

677 *Id.* at ¶¶ 60-63, 68.

678 *Id.*

679 *Id.* at ¶ 65.

680 Trial Transcript at 5, 10 (July 29, 2011).

681 *Id.* at 6.

682 Tymoshenko Application at ¶¶ 142, 149.

was admitted as defense counsel on August 1.[683] Between July 26 and August 1, the following witnesses testified while Tymoshenko was not represented by counsel:

- *On July 27*: Prodan, former Minister of Fuel and Energy and Fuel; Voytoych, Top Manager, Naftogaz; Novitskyi, ex-Minister of Industrial Policy; Sukhomlinov, Head of the Department of Carbon Resources, Gas and Metrological Control over Oil and Gas Complexes, Ministry of Coal; and Marchenko, Top Manager at Naftogaz.[684]

- *On July 28*: Kornyakova, ex-Deputy Prosecutor General of Ukraine, currently Deputy Minister of Fuel and Energy of Ukraine; Ivanov, Top Manager at Naftogaz; Kobolyev, ex-advisor to the Chair of the Board of Directors of Naftogaz; Borodin, Deputy Head of the Department of Oil, Gas, Peatlands and Oil Processing Industries, and Alternative Sources of Energy, Ministry of Fuel and Energy of Ukraine; Pavlyuk, ex-Head of the Department of Documentation, the Cabinet of Ministers; Zakharchyshyn, Deputy Director of Department of Documentation, the Secretariat of the Cabinet of Ministers of Ukraine; and Marchuk, ex-Director of UkrTransGaz.[685]

- *On July 29*: Dubyna, Chair of the Board of Directors, Naftogaz;[686] Didenko, Vice Chair of the Board of Directors, Naftogaz; Ratushnyak, ex-Vice Minister of the Cabinet of Ministers; and Bondarenko, Lead Prosecutor, the Prosecutor General of Ukraine.[687]

---

683 *Id.* at ¶ 71.

684 *Id.* at ¶ 63.

685 *Id.* at ¶ 66.

686 Tymoshenko had a face to face meeting with Dubyna on April 20, 2011 as part of the pretrial investigation. This took place in the presence and management of the investigation group (O. Pushkar, A. Oleshko, and A. Nechvoglod, the senior investigator of the Prosecutor General's Office). The first set of questions from the investigator addressed whether they knew each other and the nature of their relationship. Tymoshenko's legal counsel, B. Ferenc, attended the meeting and noted that "it is stated that the face to face meeting does not comply with the Code of Criminal Procedure Code because there were no discrepancies in the testimonies given by OD and YT." *Transcript of the face to face meeting between suspects Oleh Dubyna and Y.V. Tymoshenko*, UKRAINSKA PRAVDA, Apr. 20, 2011, http://www.pravda.com.ua/rus/articles/2011/06/14/6296208/.

687 Tymoshenko Application at ¶ 69.

Tymoshenko questioned witnesses and made motions during this period, in which four prosecutors were present in the courtroom.[688] In addition, Yurii Stepanov, an attorney representing testifying witness Igor Didenko, attended the hearing.[689]

2. Due Process Standards

"The right to counsel plays a crucial role in the adversarial system . . . , since access to counsel's skill and knowledge is necessary to accord defendants the ample opportunity to meet the case of the prosecution to which they are entitled."[690] The Sixth Amendment to the U.S. Constitution requires that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."[691] As the Supreme Court has explained, this provision "envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results."[692] Unless the defendant elects to represent herself, the defendant must be represented at trial by counsel[693]—even, if necessary, at the government's expense—in a criminal case.[694]

The defendant's right to counsel generally includes the right to counsel of his or her choice. The U.S. Supreme Court has thus held that erroneous disqualification of a defendant's chosen counsel violates his Sixth Amendment rights, regardless whether the

688 *E.g.*, Transcript at 2, 4, 9, 15-18 (July 29, 2011). The prosecutors present in the courtroom were L.O. Frolova, M.O. Shorin, O.P. Mikitenko, and A.L. Bayrachny. *Id.* at 1 (July 29, 2011). In addition, civil claimant Naftogaz's representative, I.Yu. Kost, was present and participated. *Id.* at 4, 8.

689 *Id.* at 20.

690 *Strickland v. Washington*, 466 U.S. 668, 685 (1984) (citation omitted).

691 U.S. Const. amend. VI.

692 *Strickland,* 466 U.S. at 685; ABA Model of Judicial Conduct Canon 3B(7) & cmt. (2004) (stating that judges should not continue trial proceedings when counsel is absent).

693 *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972) ("[A]bsent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.").

694 *See Gideon v. Wainwright*, 372 U.S. 335 (1963).

disqualification actually prejudiced the defendant's case.[695] This right is not absolute, however, and the U.S. Supreme Court has noted that a trial court has "latitude in balancing the right to counsel of choice against the needs of fairness . . . and against the demands of its calendar."[696] For example, one U.S. Court of Appeals has held that in considering a continuance relating to substitution of counsel, a trial court should consider, among other factors, whether prior continuances have been granted and whether the request is "dilatory, purposeful, or contrived."[697]

Article 6 of the Convention requires that "[e]veryone charged with a criminal offence" has the right "to defend himself in person or through legal assistance of his own choosing."[698] The ECtHR has found that, "although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer is one of the fundamental features of a fair trial. . . . A person charged with a criminal offence who does not wish to defend himself in person must be able to have recourse to legal

---

695 *United States v. Gonzalez-Lopez*, 548 U.S. 140, 148 (2006).

696 *Id.* at 152.

697 *United States v. Rettaliata*, 833 F.2d 361, 362 (D.C. Cir. 1987) (quoting *United States v. Burton*, 584 F.2d 485, 489 (D.C. Cir. 1978)). Other factors to be considered include "the length of the requested delay; whether other continuances have been requested and granted; the balanced convenience or inconvenience to the litigants' witnesses, counsel, and the court; whether the requested delay is for legitimate reasons, or whether it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstances which gives [sic] rise to the request for continuance; whether the defendant has other competent counsel prepared to try the case, including the consideration of whether the other counsel was retained as lead or associate counsel; whether denying the continuance will result in identifiable prejudice to defendant's case, and if so, whether this prejudice is of a material or substantial nature; the complexity of the case and other relevant factors which may appear in the context of any particular case." *Id.*

698 Convention Art. 6.

assistance of his own choosing."[699] As in the United States, the right to counsel of choice may in some instances be limited.[700]

The right to counsel means the right to *effective* counsel.[701] Therefore, both U.S. and ECtHR case law affirm defendants' right to communicate confidentially with their counsel.[702] The ECtHR thus found a violation of the defendant's rights under Article 6 where he was unable to communicate with counsel outside of the hearing of third parties.[703] Under the Sixth Amendment, United States courts similarly agree that denial of private communication with counsel may result in a violation of defendants' fundamental rights. For instance, a violation was found where counsel was forced to review materials in rooms polluted with noise and crowds, limiting privacy.[704] Courts in both jurisdictions, however, have recognized the authority of the trial court to restrict this right to confidentiality under certain circumstances, such as when the restrictions do not substantially prejudice the defendant.[705] Notwithstanding these limited exceptions, under

---

699 *Hanzevacki v. Croatia*, App. No. 17182/07, at ¶ 21 (Eur. Ct. H.R. 2009).

700 *See, e.g.*, *Croissant v. Germany*, App. No. 13611/88, at ¶ 29 (Eur. Ct. H.R. 1992) ("[T]his right . . . is necessarily subject to certain limitations where free legal aid is concerned and also where, as in the present case, it is for the courts to decide whether the interests of justice require that the accused be defended by counsel appointed by them.").

701 *See Strickland*, 466 U.S. at 686.

702 *See*, *e.g.*, *S. v. Switzerland*, App. No. 12629/87, 13965/88 (Eur. Ct. H.R. 1991); *Glasser v. United States*, 315 U.S. 60 (1942).

703 *See Ocalan v. Turkey*, App. No. 46221/99 (Eur. Ct. H.R. 2005).

704 *E.g.*, *United States v. Morris*, 470 F.3d 596 (6th Cir. 2006).

705 In determining whether the defendant's rights were violated, the Supreme Court looked to: (1) whether the presence of the third party was purposely caused by the government in order to garner confidential, privileged information, or whether the presence of the informant was a result of other inadvertent occurrences; (2) whether the government obtained, directly or indirectly, any evidence which was used at trial as a result of the third party's intrusion; (3) whether any other information gained by the third party's intrusion was used in any other manner to the substantial detriment of the defendant; and finally, (4) whether details about trial preparation were learned by the government. *Weatherford v. Bursey*, 429 U.S. 545, 554 & n.4 (1977); *see also Brennan v. United Kingdom*, App. No. 39846/98

most circumstances, a criminal defendant must enjoy the ability to consult privately with her attorney.

3. Analysis

Ukrainian law, along with Western legal standards, requires that a defendant who wishes to be represented by counsel during trial must have that right. The U.S. Supreme Court "has uniformly found constitutional error without [requiring] any showing of prejudice when counsel was either totally absent, or prevented from assisting the accused during a critical stage of the proceeding."[706] The involuntary deprivation of counsel during court proceedings is very rare. Despite her repeated attempts to move for adjournment in order to find counsel and for entry of new counsel, Tymoshenko was without defense attorneys for more than three days of trial in July 2011. During this time, cross-examination of sixteen prosecution witnesses took place, including several individuals who professed to have knowledge of the circumstances surrounding the acts that constituted the abuse of power with which she was charged. Tymoshenko did personally cross-examine Dubyna during his appearance at trial. However, the fact that Tymoshenko was not represented by counsel when Dubyna testified is particularly unfortunate. Dubyna was a critical witness for the prosecution, and there is no doubt that the Court credited his testimony about the events of January 19 and relied upon his version of those events as a basis for her conviction.

(Eur. Ct. H.R. 2001) (the evaluation of compliance with the rights under Article 6(3)(c) is examined according to the particular circumstances of each case).

[706] *United States v. Cronic*, 466 U.S. 648, 659 n.25 (1984); *see also id.* at 659 ("The presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial.").

Without legal representation, Tymoshenko, who is not a lawyer, was unable to fully question and examine witnesses, or to object to statements made or evidence introduced by the prosecution—thus undermining the "equality of arms" between the prosecution and the accused that is necessary to a fair trial.[707]

On the other hand, it must be noted that Tymoshenko's lack of representation was caused in substantial part by her actions and those of her attorneys: her main attorney, Vlasenko, absented himself from court for long stretches with little or no explanation, leaving Tymoshenko in the hands of counsel who described himself as unfamiliar with the case; Tymoshenko refused to stand while moving for the admission of new counsel; Tymoshenko sought admission of Tytarenko, Plahotnyuk, and Siryy, but shortly thereafter, declined to be represented by them; Vlasenko was removed as Tymoshenko's counsel due to persistent conflicts with Judge Kireyev; and, Tymoshenko repeatedly sought the re-admission of Vlasenko, Feldman, and Enock, whom Judge Kireyev had already rejected as unsuitable. These actions repeatedly disrupted court proceedings and undermined the Judge's ability to effectively manage the trial.

Even if Tymoshenko and her attorneys bore partial or even primary responsibility, however, we have serious concerns about Judge Kireyev's decision to proceed with the trial while Tymoshenko was unrepresented, rather than adjourn to allow her to locate acceptable counsel and to afford new counsel the opportunity to become sufficiently familiar with her case. Even appointing counsel of the Court's choosing (rather than Tymoshenko's) would have been preferable to proceeding absent any representation. Judge Kireyev told Skadden that Tymoshenko "had never agreed" to a court-appointed

[707] *See, e.g.*, *Pishchalnikov v. Russia*, App. No. 7025/04, at ¶ 68 (Eur. Ct. H.R. 2009).

attorney.[708] Under analogous circumstances in which defendants have declined court-appointed counsel, American courts often "appoint 'standby counsel' to aid the accused if and when the accused requests help, and to be available to represent the accused in the event that termination of the defendant's self-representation is necessary."[709] The overriding point, however, is that the Court should have ensured that Tymoshenko did not lack counsel during critical stages of the proceedings, even if her actions and those of her counsel made it exceedingly difficult to proceed. Under Western standards, Tymoshenko's lack of counsel at critical stages of her criminal trial likely constituted a violation of her due process rights.

The additional issue, whether Tymoshenko was able to communicate privately with her counsel while she was represented, is a fact-intensive inquiry, which depends primarily on whether the lack of privacy undermined counsel's effectiveness. ECtHR case law looks in part to whether the defendant was given other opportunities to communicate with counsel. For instance, the ECtHR has found no breach of a defendant's rights where he was prevented from communicating with his lawyer for limited periods of time while in solitary confinement, because the defendant had adequate opportunity to communicate with the lawyer at other times.[710] Here, however, the lack of confidentiality allegedly occurred during the court sessions themselves, which are perhaps the most important times for attorney-client communication. It seems unlikely

---

708 Kireyev Skadden Interview at 12 (April 26, 2012). It is unclear whether Judge Kireyev meant that he had offered to appoint counsel for Tymoshenko but she rejected the offer, or instead whether he meant that she had never requested appointed counsel.

709 *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975); *see also Martinez v. Court of Appeal of California*, 528 U.S. 152, 162 (2000).

710 *See Bonzi v. Switzerland*, App. No. 7854/77 (Eur. Ct. H.R. 1978).

that Tymoshenko's ability to confer privately with counsel at other times would make up for the lack of confidentiality at trial.

Tymoshenko also has stated that her communications with her attorneys were further restricted after August 5, the date on which her restraining measures were changed to detention. According to Tymoshenko, the Kyiv Detention Center (SIZO) restricted visitors after business hours, which severely undermined her ability to communicate with counsel on days when court sessions ran beyond visiting hours.[711] If this allegation is accurate, it raises further concerns about Tymoshenko's ability to effectively confer with and benefit from the assistance of counsel during this period.

G. Presentation of Defense

Prior to trial, Tymoshenko submitted several motions requesting the presence at trial of witnesses whom she believed were favorable to her defense. Judge Kireyev largely rejected these motions on the grounds that the requested witnesses were duplicative, unnecessary, or unrelated to her case. Tymoshenko argues that Judge Kireyev's refusal to permit the testimony of these witnesses undermined her ability to present her defense.

1. Factual and Legal Background

Under Ukrainian law, a pretrial investigation is conducted by an Investigator, who is responsible for conducting a "thorough, complete and objective pretrial investigation in criminal cases."[712] As explained in Part IV.A.1.b, *supra*, the Investigator interviews witnesses and compiles evidence regarding the accused's guilt. Members of the OPG

---

[711] Tymoshenko Skadden Interview at 13 (Jun. 28, 2012) ("The jail I was staying in at the time did not allow visitors after the close of business. My lawyers and I did not even have one hour to communicate with each other. We did not even know the witnesses for the next day.").

[712] CPC Art. 114-1.

told Skadden that the Investigator is independent and does not align with either the prosecution or defense, but rather interviews all persons with knowledge of the relevant events.[713] The relationship between the Investigator and the OPG defies easy characterization and provisions of the CPC indicate that the OPG does exercise influence over Investigators.[714]

Once the case has been submitted to the Court, the Investigator submits for the judge's consideration an initial list of witnesses. The OPG told Skadden that "traditionally, all people on the list are accepted by the Judge."[715] The defense and prosecution may request additional witnesses, which are approved or rejected by the judge. Several provisions of the CPC appear to confirm the defendant's right to call witnesses who are relevant to her defense.[716]

---

713 Mikitenko and Shorin Skadden Interview at 9-10 (June 27, 2012).

714 *See, e.g.*, CPC Art. 114 ("When conducting pretrial investigation, [the] investigator takes all decisions related to [the] investigation and investigative actions on his/her own except when [the] law requires obtaining consent of the court (judge) or prosecutor . . . ."); *id.* ("Whenever [the] investigator disagrees with [the] prosecutor's instructions with regard to prosecuting an individual as an accused, determining the nature of [the] crime and scope of charges, referring the case to court or dismissing the case, [the] investigator shall have the power to submit the case to a higher prosecutor with his/her written comments. In such a case, the prosecutor either revokes instructions of the lower prosecutor or assigns [the] investigation in this case to another investigator."); *id.* at Art. 117 ("[T]he District prosecutor resolves disputes over competence among investigators . . . ."). One document provided to Skadden by the Prosecutor General's Office indicates that the Prosecutor General is involved in selecting the investigative team and exercised that power in Tymoshenko's case. *See* Report from E.A. Kotets to R.R. Kuzmin at 1 (June 6, 2011) ("Pursuant to the resolution of [First Deputy General Prosecutor] Kuzmin dated 11 April 2011, Mr. Kotets was included in the group of investigators who investigates the criminal case No. 94-3151 against Y.V. Tymoshenko.").

715 Mikitenko and Shorin Skadden Interview at 10 (June 27, 2012).

716 *See, e.g.*, CPC Art. 253 ("At the stage of the trial, the judge may not deny participants to trial in examination of proofs if the latter are appropriate and admissible."); *id.* at Art. 261 ("The prosecution . . . and the defense . . . enjoy equal rights to . . . produce evidence."); *id.* at Art. 263(4) ("In court session, the defendant has the right to . . . produce evidence, request that the court attach documents to the records of the case, cite witnesses, assign expert examination and direct to submit other proofs.").

Following the pretrial investigation stage, the Investigator submitted, and Judge Kireyev accepted, a list of witnesses, all of whom had participated in pretrial interviews.[717] As explained in Part IV.A.1.b, *supra*, Tymoshenko's counsel had requested that Nechvoglod, the senior investigator assigned to her case, interview additional witnesses, but these requests were deemed untimely. Tymoshenko submitted a request for additional witnesses, including the Deputy Head of the State Audit Department; several top Naftogaz employees; and several former members of the Cabinet of Ministers.[718] The defense argued that these individuals would provide material testimony, including facts concerning the gas contracts, the Cabinet of Ministers' actions, and calculations of losses that Naftogaz incurred.[719] It appears that at least some of these potential witnesses had not been interviewed by the Investigator.

Other potential witnesses—including Petro Krupko, Vadim Frolov, Michael Becker, and Grigory Nemirya—were questioned during the preliminary investigation.[720] Krupko was the former Minister of the Cabinet of Ministers, who had helped Turchinov convene the January 19, 2009 Cabinet meeting at which the prosecution claimed that Turchinov had been unable to obtain approval of the Directives.[721] During his pretrial

717 Mikitenko and Shorin Skadden Interview at 9 (June 27, 2012).

718 Skadden has been unable to confirm the number of witnesses requested by Tymoshenko. In her ECtHR application, she sets the number at 18. Tymoshenko Application at ¶¶ 98, 148. Skadden was told informally by members of Tymoshenko's defense team that she had attempted to call 30 or 35 witnesses.

719 Briefing on the Summoning of T.V. Ruban, T.H. Aldarkina, P.M. Krupko, M.V. Becker, and V.A. Frolov to Appear in Court at 1 (document provided to Skadden by the OPG).

720 Despite the existence of transcripts of pretrial interviews with several individuals, Skadden was informed by the Prosecutor General's Office that "only P.M. Krupko was questioned as a witness during the preliminary investigation." Briefing on the Summoning of T.V. Ruban, T.H. Aldarkina, P.M. Krupko, M.V. Becker, and V.A. Frolov to Appear in Court at 1.

721 Krupko Skadden Interview at 1 (June 14, 2012).

interview, Krupko supported Tymoshenko's view that the January 19 meeting was intended merely "to inform all the members of the [Cabinet of Ministers]" about the negotiations, and that "there was no intention to approve the Directives at the meeting."[722] Krupko was not ultimately included on the witness list submitted by the Investigator to the Court.[723]

Frolov is the Head Engineer of Naftogaz subsidiary UkrTransGaz ("UTG"), with responsibilities including organization and control of the Ukraine gas transit system.[724] During his pretrial interview, he described the natural gas shutdown by Gazprom in January 2009 and UTG's efforts to keep all Ukrainian regions supplied.[725] Frolov participated in the January 2009 Gazprom-Naftogaz negotiations, specifically charged with predicting Ukrainian consumer demands as well as the volumes of gas for Europe due for transit through Ukraine.[726] In response to investigator questions, he stated that "it was difficult to determine how much gas belonged to Naftogaz at that point and therefore how long Naftogaz gas would have lasted."[727]

Becker was appointed the Chief Engineer of UTG on January 21, 2001, and was responsible for, among other things, the maintenance of the compressor stations'

[722] Krupko Pretrial Interview at 2 (Apr. 22, 2011). Krupko also stated his "personal belief . . . that according to legislation it was not necessary [for the Cabinet of Ministers] to approve the Directives." *Id.*

[723] Briefing on the Summoning of T.V. Ruban, T.H. Aldarkina, P.M. Krupko, M.V. Becker, and V.A. Frolov to Appear in Court at 1.

[724] Frolov Pretrial Interview at 1 (Feb. 16, 2011).

[725] *Id.*

[726] *Id.* at 1-2.

[727] *Id.* at 2.

equipment and the line parts of the gas transportation system of Ukraine.[728] In his pretrial interview, Becker provided a chronology of Gazprom's shutdown of natural gas to Ukraine in January 2009, including his opinion that "Gazprom had the possibility not to resume the transit of natural gas to the Western European countries through Ukrainian territory."[729] In addition, Becker offered information regarding negotiations between Ukraine, Russia, and European Union representatives during January 2009.[730]

Nemirya served as Vice Prime Minister of Ukraine from December 2007 until March 2010.[731] In this role, he was responsible for issues related to European integration and international cooperation.[732] In his pretrial interview with the Investigator, Nemirya explained that directives of delegation of Naftogaz for negotiations with Gazprom are merely authorizations, since approval of the Cabinet of directives on negotiations between economic entities is not required.[733] He stated that: "I have every reason to believe that the prime minister of Ukraine acted on the basis and within the scope of powers provided by the Constitution and Law of Ukraine."[734]

The OPG maintains that Krupko's testimony was unnecessary, as the facts he would have testified to were already corroborated by documents and by the transcript of

---

728 Becker Pretrial Interview at 1 (Apr. 7, 2011).

729 *Id*. at 1-2.

730 *Id*.

731 Nemirya Pretrial Interview at 1 (Apr. 22, 2011).

732 *Id*.

733 *Id*. at 4.

734 *Id*.

his pretrial interview.[735] Likewise, the other witnesses requested by Tymoshenko were objected to by the prosecution as irrelevant to resolution of the case and redundant in light of documented expert opinions and Naftogaz statistics.[736] The Court agreed, denying all but two of Tymoshenko's witness requests. The Court determined that the losses at issue were documented elsewhere and that these witnesses did not directly participate in, nor could they have direct knowledge of, the circumstances surrounding the signing of the Naftogaz-Gazprom contracts.[737] Judge Kireyev also concluded that other requested witnesses were cumulative to existing evidence or were irrelevant.[738]

The Court granted Tymoshenko's request to examine only two additional witnesses: Oleksandr Turchinov and Mikhail Levinsky.[739] The OPG told Skadden that this was an equitable result, since the prosecution was likewise only permitted two witnesses in addition to the fact witnesses submitted by the Investigator: Yuriy Boyko and Igor Didenko.[740]

---

735 Briefing on the Summoning of T.V. Ruban, T.H. Aldarkina, P.M. Krupko, M.V. Becker, and V.A. Frolov to Appear in Court at 1. As Krupko had been interviewed, the Government reasons his testimony at trial was unnecessary, because the prosecutors, defendant, and the Court knew from the pretrial investigation record what he would testify to. The Government argues that his trial testimony would not have differed, as "[Krupko] was aware that there [were] criminal charges for saying something different at trial than pretrial." Mikitenko and Shorin Skadden Interview at 9 (June 27, 2012).

736 Briefing on the Summoning of T.V. Ruban, T.H. Aldarkina, P.M. Krupko, M.V. Becker, and V.A. Frolov to Appear in Court at 1.

737 *Id.*

738 Kireyev Skadden Interview at 15 (Apr. 26, 2012).

739 Mikitenko and Shorin Skadden Interview at 9 (June 27, 2012).

740 *Id.*

The Court at times limited Tymoshenko's ability to cross-examine witnesses, including the examination of Prime Minister Azarov.[741] Judge Kireyev overruled questions Tymoshenko posed to Azarov on at least 23 occasions, stating that Tymoshenko's questions—the majority of which addressed RosUkrEnergo—were irrelevant to the topics at issue, were abusive, or contained improper "judgmental statements."[742] During the Azarov examination alone:

- The Court overruled the defendant's question concerning the process by which RosUkrEnergo entered the market and whether there was a government vote on it;[743]
- The Court overruled the defendant's question about the nature of RosUkrEnergo's appearance on the market, what Azarov had to do with the origination of the company, and whether decisions were made in 2004 concerning RosUkrEnergo's entry into the market;[744]
- The Court overruled the defendant's question of whether RosUkrEnergo's gave guarantees in 2004 that it would avoid the debt for which Ukraine was later responsible;[745]
- The Court overruled the defendant's question whether Azarov, as first deputy prime minister, provided Ukrainian guarantees of protection against RosUkrEnergo's debts;[746]
- The Court overruled the defendant's question whether Azarov knew that Tymoshenko did not hold any office in 2004, "when RosUkrEnergo was hired as a middleman;"[747]

[741] *See* Part IV.E, *supra*; Trial Transcript at 27 (Aug. 5, 2011).

[742] *Id.* at 15-27.

[743] *Id.* at 15.

[744] *Id.* at 15-17.

[745] *Id.* at 17.

[746] *Id.* at 18.

[747] *Id.* at 19.

- The Court overruled the defendant's question concerning the objectives that were set for RosUkrEnergo in 2004 when it entered the Ukrainian market;[748]

- The Court overruled the defendant's question of why, and to solve what problems, "RosUkrEnergo was engaged in 2004 as a middleman;"[749] and

- The Court overruled the defendant's question whether Azarov knew that the agreements signed in 2009 do not rescind the ratified agreement of October 4, 2001.[750]

The Court accused Tymoshenko of "dragging out the case and interfering with the establishment of the truth."[751] In response to being repeatedly overruled by the Court, defense counsel Sukhov stated:

> [A] number of witnesses have said, and the indictment states, that the Ukrainian delegation was not prepared for negotiations over gas deliveries. That is to say, our position was weak, and the result showed it. Part of this position was related to RosUkrEnergo's debts, which had to be settled. The question pertains to how they originated; in the defendant's opinion it is because RosUkrEnergo had no guarantees. If there were guarantees, we want to ascertain this and in this way establish the truth—whether our position was tough or weak because of the existence of these debts and the ability to pay them.[752]

Sukhov later complained to the Court:

> [T]he prosecutor himself asked questions about the instructions, which talked about the assignment of claims for RosUkrEnergo's debts. So I believe that this question is certainly relevant to the trial of this case. You didn't overrule the question about RosUkrEnergo's debts. Now we're talking about debts. The question pertains to for what goal and how the debts were created. These are related questions. The prosecution's questions aren't being overruled. It's not clear why our questions are now being overruled.[753]

---

[748] *Id*. at 20.

[749] *Id*.

[750] *Id*. at 22.

[751] *Id*. at 15.

[752] *Id*. at 16.

[753] *Id*. at 20.

The Court, however, continued to overrule Tymoshenko questions, ruling that they did not pertain to the subject of the trial in her criminal case.[754] At the conclusion of Azarov's testimony, Sukhov closed by stating:

> I have an objection to the presiding judge's actions. I was deprived of the right to ask questions in this session. When I said that I don't have any questions now, I didn't say that I don't have any at all. I said that I will ask questions after Yulia V. Tymoshenko was virtually deprived of the right to ask questions and I was deprived of this right.

2. Due Process Standards

If the right to a fair trial is to be meaningful, it must include a right on the part of the defendant to present a vigorous defense, particularly to call and question witnesses. As the U.S. Supreme Court has explained:

> The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the [factfinder] so it may decide where the truth lies. . . . This right is a fundamental element of due process of law.[755]

In the United States, these rights are protected under the Sixth Amendment of the United States Constitution, which provides that "[i]n all prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him [and] to have compulsory process for obtaining witnesses in his favor."[756] The Supreme Court has explained that "truth is more likely to be arrived at by hearing the testimony of all persons of competent

---

[754] *Id.* at 26.

[755] *Washington v. Texas*, 388 U.S. 14, 19 (1967); *see also Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) ("Few rights are more fundamental than that of an accused to present witnesses in his own defense.").

[756] U.S. Const. amend. VI; *see also Washington,* 388 U.S. at 19 (1967).

understanding who may seem to have knowledge of the facts involved in a case, leaving the credit and weight of such testimony to be determined by the jury or by the court."[757]

The defendant's constitutional right to present a defense is not without its limitations, however. The right must be balanced against the other interests in the trial process.[758] For instance, the defendant must comply with the established rules of procedure and evidence.[759] Further, the defendant's right to call witnesses extends only so far as the requested testimony is plausibly material and related to her defense.[760]

The central concern in protecting a defendant's right to confront witnesses is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversarial proceeding before the trier of fact.[761] In bolstering this right to confrontation, the Court noted that it: (i) ensures that a witness will testify personally in court and give his statements under oath—thus impressing him with the seriousness of the matter and guarding against the lie by possibility of a penalty of perjury; (ii) forces the witness to submit to cross-examination; and (iii) permits the jury (or fact-finder) to observe the demeanor of the witness, aiding in the assessment of credibility.[762] Face-to-face confrontation enhances the accuracy of fact-finding by reducing the risk that a witness will wrongfully implicate an innocent person.[763] Even where there is overwhelming evidence to corroborate a statement and support its

---

757 *Id.* at 22 (quoting *Rosen v. United States*, 245 U.S. 467, 471 (1918)).

758 *Michigan v. Lucas*, 500 U.S. 145, 149 (1991).

759 *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973).

760 *United States v. Valenzuela-Brenal*, 458 U.S. 858, 867 (1982).

761 *Maryland v. Craig*, 497 U.S. 836, 845 (1990); *Lilly v. Virginia*, 527 U.S. 116, 123-24 (1999).

762 *California v. Green*, 399 U.S. 149, 158 (1970).

763 *Craig*, 497 U.S. at 846.

reliability, the U.S. Supreme Court has insisted on the necessity of cross-examination of witnesses.[764] The right to confront and cross-examine adverse witnesses is not absolute, however. It may be limited to accommodate other legitimate interests in the criminal trial process.[765] Trial judges retain wide latitude to reasonably limit a criminal defendant's right to cross-examine a witness based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant.[766]

Article 6 of the Convention provides that everyone charged with a criminal offense has, at a minimum, the right "to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."[767] As in the United States, the ECtHR recognizes that this right is not unlimited and must be balanced against the need for efficient trial administration. In a recent case, defendants complained that the national courts had not examined all the witnesses proposed by them and would not allow the taking of further evidence.[768] The ECtHR rejected this claim, stressing that "the guarantees contained in . . . the Convention cannot be interpreted as granting a defendant the right to have an infinite number of witnesses called."[769] The Court found there had been no violation

[764] *Crawford v. Washington*, 541 U.S. 36, 61 (2004).

[765] *Chambers*, 410 U.S. at 295.

[766] *Lucas*, 500 U.S. at 149.

[767] Convention Art. 6, §(3)(d).

[768] *Földes & Földesné Hajlik v. Hungary*, App. No. 41463/02, at ¶ 27 (Eur. Ct. H.R. 2006).

[769] *Id.* at ¶ 28.

where "nothing in the case file disclos[ed] any appearance that the courts lacked impartiality or that the proceedings were otherwise unfair or arbitrary."[770]

The ECtHR has interpreted this provision to include a right to examine adverse witnesses, including those who had previously submitted statements to government authorities subsequently used at trial, as fundamental to the presentation of a defense and fair trial.[771] The Court explained that a "defendant must be given an adequate and proper opportunity to challenge and question a witness against him or her, either when the statements were made or at a later stage of the proceeding."[772] Where convictions have been based solely on statements without corroborating evidence, and where the defendant was given no adequate and proper opportunity to challenge and question an adverse witness at the time of the statement or later in the proceedings, the Court has held that the defendant was deprived of a fair trial.[773] This limitation on the right to examine adverse witnesses, however, requires a comprehensive examination of the trial and evidence as a whole. The Court generally views allowing the admission of a witness statement in lieu of live evidence at trial as a measure of last resort.[774]

3. Analysis

Tymoshenko's ability to present a defense in her trial appears to have been compromised to a degree that is troubling under Western standards of due process and the

770 *Id.* at ¶ 29.

771 *Sibgatullin v. Russia*, App. No. 1413/05, at ¶¶ 22-23 (Eur. Ct. H.R. 2012) (finding violation of Convention where trial court permitted witness statements submitted by prosecution to be read aloud with no opportunity for cross-examination).

772 *Id.* at ¶¶ 50-51 (citing *Artner v. Austria*, 28 Aug. 1992 (ser. A) at 21, *Delta v. France*, 19 Dec. 1990 (ser. A) at 37, and *Rachdad v. France*, App. No. 71846/01, at ¶ 25 (Eur. Ct. H.R. 2003)).

773 *Saidi v. France*, App. No. 14647/89, at ¶ 41 (Eur. Ct. H.R. 1993).

774 *Al-Khawaja & Tahery v. United Kingdom*, App. No. 26766/05, at ¶ 125 (Eur. Ct. H.R. 2011).

rule of law. In addition to the witnesses proposed by the Investigator, Tymoshenko requested the participation at trial of 18 additional witnesses. Only two of Tymoshenko's proposed witnesses were permitted to testify. The OPG claims that this demonstrates Judge Kireyev's evenhandedness, because he added only two additional witnesses selected by the prosecution. Leaving aside the question whether the prosecution was able to influence the Investigator's list of witnesses more than the defense, the main consideration is not numerical allocation, but whether the witnesses were material to Tymoshenko's defense and whether they were excluded for legitimate reasons.

At least some of the witnesses identified by Tymoshenko seemed likely to have been relevant to contested issues in the case. For example, Krupko would have testified to his understanding that, as Prime Minister, Tymoshenko had the right to participate in international negotiations without a directive.[775] Likewise, Krupko told Skadden that "Norms that should be applied to public situations were applied to a private situation involving corporate entities."[776] In a notarized proffer of testimonial evidence he would offer, Krupko provides details regarding the January 19 and 21, 2009 Cabinet of Ministers meetings, including that "the actions of the Ukrainian delegation during negotiations on 17-20 January 2009 and achieved agreements on conditions of the Russian gas supply to Ukraine and its transit to the European countries were approved by the protocol."[777] Judge Kireyev rejected Tymoshenko's request for Krupko to participate at trial on the ground that Krupko had already provided pretrial testimony, to which his

---

775 Krupko Skadden Interview at 3-4 (June 14, 2012).

776 *Id.* at 4.

777 Evidence of Petro Mykolayovych Krupko to R. V. Kireyev at 2.

trial testimony was expected to confirm.[778] But this rationale would apply just as readily to the list of witnesses provided by the Investigator and approved by Judge Kireyev—all of whom had given pretrial interviews and yet were permitted to testify at trial.

Other requested witnesses were less obviously relevant. For instance, Tymoshenko requested the testimony of Natalia Ruban, Deputy Head of the State Audit Department, which produced reports that were introduced at trial to substantiate damages. Ruban did not draft the reports, however, and was involved only administratively in their creation.[779] Tymoshenko submitted a motion requesting Ruban's testimony "to establish the origin of the statements, the procedure, which was used for their preparation and signing."[780] However, the motion offers no reason to believe that Ruban's testimony would have addressed the substance of the reports themselves or would have been relevant to any contested issues at trial.

Judge Kireyev rejected a number of Tymoshenko's proposed witnesses because they lacked "direct knowledge of the signing of the contracts of January 19, 2009."[781] At the same time, however, a number of other witnesses who also lacked such firsthand knowledge were permitted to testify. For instance, Prime Minister Azarov testified despite his lack of involvement in the 2009 negotiations.[782] This inconsistent treatment

---

778 Briefing on the Summoning of T.V. Ruban, T.H. Aldarkina, P.M. Krupko, M.V. Becker, and V.A. Frolov to Appear in Court at 1.

779 Ruban Skadden Interview at 4 (May 25, 2012).

780 Motion to Summon Witness N.I. Ruban at 2.

781 Briefing on the Summoning of T.V. Ruban, T.H. Aldarkina, P.M. Krupko, M.V. Becker, and V.A. Frolov to Appear in Court at 1.

782 *See* Part IV.E, *supra*; Trial Transcript at 15-27 (Aug. 5, 2011); Azarov Skadden Interview at 4 (May 18, 2012); Azarov Skadden Interview at 1 (June 1, 2012).

suggests that the record does not reflect the "equality of arms" principle that is such an important facet of the defendant's right to a fair trial.

Finally, witnesses with expertise regarding the alleged losses suffered by Naftogaz were excluded on the theory that their testimony could add nothing to the expert reports and statistics.[783] However, the testimony of these witnesses seems highly relevant, particularly since the issue of Naftogaz's alleged losses was so hotly contested at trial. Given the importance of face-to-face confrontation as a means of promoting truth in an adversarial proceeding, we do not believe that the expert reports and statistics were an adequate substitute for live testimony. Moreover, other witnesses who wrote reports were permitted to testify at trial.

In sum, a cornerstone of due process and the rule of law is a criminal defendant's right to put on an effective defense. The severe limitations on Tymoshenko's ability to call witnesses undermined this fundamental principle.

H. Selective Prosecution

Tymoshenko was convicted under Ukrainian Criminal Code Article 365 for acting in "[e]xcess of authority or official powers" causing "grave consequences." She has not argued that Article 365 targets conduct that cannot be criminalized, or that the statute is vague.[784] Instead, she has maintained her innocence of the charge, claiming that her prosecution was a politically motivated reprisal. Her ECtHR application alleges that the charges were "politically inspired," and that they amount to "political persecution rather

[783] Briefing on the Summoning of T.V. Ruban, T.H. Aldarkina, P.M. Krupko, M.V. Becker, and V.A. Frolov to Appear in Court at 1.

[784] *See* Vlasenko Skadden Interview at 7 (June 15, 2012) (Q: "You have talked about the elements of Article 365. Do you challenge the law itself, for vagueness or otherwise?" A: "No. The four elements are concrete.").

than criminal prosecution."[785] The OPG denies that politics played any part in its decision.

1. Factual and Legal Background

Article 365 of the Criminal Code outlaws:

> Excess of authority or official powers, that is a willful commission of acts, by an official, which patently exceed the rights and powers vested in him/her, where it caused any substantial damage to the legally protected rights and interests of individual citizens, or state and public interests, or interests of legal entities . . . .[786]

Such an offense is punishable by a term of imprisonment of two to five years, among other penalties. Conviction also results in "the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years." If the offense "caused any grave consequences," the term of imprisonment is seven to ten years.[787] The Verkhovna Rada, Ukraine's parliament, recently considered—but ultimately rejected—a bill that would have decriminalized Article 365.[788]

Throughout her trial, Tymoshenko argued that her prosecution was a politically orchestrated sham. Following her conviction, Tymoshenko filed an application before the ECtHR. Her application contends that her prosecution was a politically motivated reprisal aimed at her leadership of the Batkivschyna party, the strongest and most

---

785 Tymoshenko Application at ¶¶ 156-157.

786 Criminal Code of Ukraine Art. 365(1) (Sept. 1, 2001).

787 *Id.* at Art. 365(3).

788 *Parliament again votes down proposal to decriminalize 'Tymoshenko article,'* KYIV POST, Feb. 8, 2012, http://www.kyivpost.com/content/politics/parliament-again-votes-down-proposal-to-decriminal.html.

influential opposition party in Ukraine.[789] Tymoshenko received 47 percent of the vote in the 2009 presidential election, and she claims that her popular support is close to that of President Yanukovych.[790] Tymoshenko alleges that only 0.2 percent of those indicted for criminal charges in Ukraine are eventually acquitted; therefore, prosecution is an effective tool for neutralizing political opponents.[791]

Tymoshenko's ECtHR application does not provide any direct evidence that her prosecution was politically motivated. Instead, the application alleges that international observers view her prosecution, and those of other Ukrainian political leaders, as an attempt by the Ukrainian government to prevent the participation of opponents in upcoming elections.[792] She quotes at length from a report issued by the U.S. Department of State criticizing Ukraine's prosecution of former government officials, including Tymoshenko,[793] and from a European Parliament resolution warning the Government of Ukraine against "the prosecution of individual members of the government for decisions that were taken collegially."[794]

---

789 Tymoshenko Application at ¶ 153. Additionally, Tymoshenko's attorney told Skadden that past Ukrainian leaders who negotiated contracts similar to that signed in January 2009 were not prosecuted for their actions.

790 Tymoshenko's ECtHR application claims that "sociological surveys conducted by Razumkov's Centre, Democratic Alliance, etc. in August 2011 [indicate that] the applicant enjoys support of 15% of the respondents and the incumbent president 17%, while no other potential candidates are getting even close to 10%." Tymoshenko Application at ¶ 153.

791 *Id.*

792 *Id.*

793 *Id.* at p. 8 (quoting "2010 Country Report on Human Rights & Practices," Bureau of Democracy, Human Rights, and Labor, U.S. Department of State).

794 *Id.* (citing "Ukraine: The Cases of Yulia Tymoshenko and other members of the former government" (June 9, 2011)). In October 2011, European Union foreign policy chief Catherine Ashton stated that Tymoshenko's conviction showed that justice was being applied selectively in the form of politically motivated prosecutions. *Ukraine ex-PM Yulia Tymoshenko jailed over gas deal*, BBC NEWS, Oct. 11, 2011, http://www.bbc.co.uk/news/world-europe-15250742.

The volume of criminal cases brought by the OPG against individuals associated with the Tymoshenko government has drawn international attention.[795] In addition to former Prime Minister Tymoshenko, thirteen former senior officials from her government—including four cabinet ministers, five deputy ministers, two agency heads, one governor, and the head of the state gas monopoly—have been charged with crimes relating to actions performed in their official capacities, such as abuse of office, excess of authority, and misappropriation of funds.[796] The United States has criticized what it describes as "selective justice" in these prosecutions and has called for "the Government of Ukraine to cease selective prosecutions, to free Mrs. Tymoshenko and the other senior

---

[795] *See, e.g.*, *Update: Ukraine opens criminal case over $290 million carbon cash*, KYIV POST, Apr. 28, 2010, www.kyivpost.com/content/ukraine/update-ukraine-opens-criminal-case-over-290-millio.html; *Prosecutors arrest former deputy defense minister*, KYIV POST, Aug. 25, 2010, http://www.kyivpost.com/content/ukraine/prosecutors-arrest-former-deputy-defense-minister.html; *Prosecutors launch probe of Tymoshenko, arrest her environmental minister*, KYIV POST, Dec. 16, 2010, http://www.kyivpost.com/content/ukraine/prosecutors-launch-probe-of-tymoshenko-arrest-her-.html; *Ukraine detains former interior minister*, KYIV POST, Dec. 26, 2010, http://www.kyivpost.com/content/politics/ukraine-detains-former-interior-minister.html; *Czechs grant asylum to Danylyshyn (update)*, KYIV POST, Jan. 13, 2011, http://www.kyivpost.com/content/ukraine/czechs-grant-asylum-to-danylyshyn-update.html; *Court postpones consideration of Lutsenko's appeal*, KYIV POST, Jan. 4, 2011, http://www.kyivpost.com/content/politics/court-postpones-consideration-of-lutsenkos-appeal.html; *Update: Foreign Ministry confirms Danylyshyn granted political asylum*, KYIV POST, Jan. 14, 2011, http://www.kyivpost.com/content/politics/update-foreign-ministry-confirms-danylyshyn-grante.html; *Court grants amnesty for former First Deputy Justice Minister Korniychuk*, KYIV POST, Dec. 9, 2011, http://www.kyivpost.com/content/politics/court-grants-amnesty-for-former-first-deputy-justi.html; *Ivaschenko not treated in and outside jail, says his wife*, KYIV POST, Dec. 24, 2011, http://www.kyivpost.com/content/politics/ivaschenko-not-treated-in-and-outside-jail-says-hi.html; *Ally of Ukraine's Tymoshenko jailed for 5 years*, REUTERS, Apr. 12, 2012, http://uk.reuters.com/article/2012/04/12/uk-ukraine-tymoshenko-ally-idUKBRE83B0XT20120412; *Lawyers to appeal against Ivaschenko verdict*, KYIV POST, Apr. 12, 2012, http://www.kyivpost.com/content/politics/lawyers-to-appeal-against-ivaschenko-verdict.html; *Ivaschenko Appeals Again Ruling of Pechersky District Court*, KYIV POST, Apr. 27, 2012, http://www.kyivpost.com/content/politics/ivaschenko-appeals-again-ruling-of-pechersky-distr.html; *Lawyer appeals Lutsenko's verdict at Appeals Court*, KYIV POST, Mar. 7, 2012, http://www.kyivpost.com/content/politics/lawyer-appeals-lutsenkos-verdict-at-appeals-court.html.

[796] Press Release, Embassy of the United States Kyiv, Ukraine, U.S. OSCE Statement on Lutsenko (Mar. 1, 2012), http://ukraine.usembassy.gov/statements/lutsenko-osce.html; Press Release, Embassy of the United States Kyiv, Ukraine, U.S. Government Statement on Lutsenko (Feb. 27, 2012), http://ukraine.usembassy.gov/statements/lutsenko.html. These individuals include former Acting Ukrainian Defense Minister Valeriy Ivaschenko; Environment Minister Heorhiy Filipchuk; former Economy Minister Bodan Danylyshyn; and former First Deputy Justice Minister Yevhen Korniychuk.

figures of the previous government currently in detention, and to restore their full political and civil rights."[797] The most recent U.S. State Department Country Report on Human Rights in Ukraine states:

> The most serious human rights development during the year was the politically motivated detention, trial, and conviction of former prime minister Yulia Tymoshenko, along with selective prosecutions of other senior members of her government.[798]

Ukraine's Prosecutor General Viktor Pshonka has stated that political reasons have not driven the agenda of his office.[799] The OPG provided Skadden with the following statistics regarding recent prosecutions for violations of Article 365(3):[800]

	2009	**2010**	**2011**
Total number of people sentenced	56	52	46
Imprisonment	4	22	15
Imprisonment with further release on probation	44	27	28
Additional charge of deprivation of the right to hold certain offices	29	37	31

797 Press Release, Embassy of the United States Kyiv, Ukraine, Conviction of Former Acting Defense Minister Ivaschenko (Apr. 13, 2012), http://ukraine.usembassy.gov/statements/ivashchenko.html; Press Release, Embassy of the United States Kyiv, Ukraine, Statement on Ukraine: Dnipropetrovsk Bombings—Selective Prosecutions, United States Mission to the OSCE (May 3, 2012) (statement of Ambassador Ian Kelly to the Permanent Council, Vienna), http://ukraine.usembassy.gov/statements/osce-bombings.html.

798 United States Dep't of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2011, "Ukraine," at 1 (2011), http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186415.

799 *Prosecutor general says there were no politics in questioning Tymoshenko and Turchinov*, KYIV POST, Dec. 10, 2010, http://www.kyivpost.com/content/politics/prosecutor-general-says-there-were-no-politics-in-.html.

800 Statistics in relation to the criminal proceedings under part 3, article 365 of the Criminal Code of Ukraine in 2009-2011 (in the country) at 1 (document provided to Skadden by the OPG).

2. Due Process Principles

American jurisprudence recognizes three important principles that bear on the present case. The first principle is the notion that justice must be dispensed fairly and impartially, without bias or animus. As former U.S. Attorney General Robert Jackson famously stated:

> The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous. . . . While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.[801]

The second principle is that criminal prosecutions should not be used as a tool to achieve political goals.[802] The prosecution of a former head of government, unsuccessful presidential candidate, and leader of the opposition merits close scrutiny in all respects. The third equally important principle is that no person is above the law.[803] Like everyone else, those who wield power and influence must honor the constraints imposed by the law, and must be held accountable when they fail to do so.

In the United States, one convicted of criminal wrongdoing normally may not rely on the prosecution's improper motive as a means of attacking his or her conviction.[804]

---

801 Robert H. Jackson, The Federal Prosecutor (Apr. 1, 1940), http://www.roberthjackson.org/the-man/speeches-articles/speeches/speeches-by-robert-h-jackson/the-federal-prosecutor/.

802 *See* Thomas M. DiBiagio, *Politics and the Criminal Process: Federal Public Corruption Prosecutions of Popular Public Officials Under the Honest Services Component of the Mail and Wire Fraud Statutes*, 105 DICK. L. REV. 57, 64 (2000) ("The intimidation and use of the criminal process as but another political device is profoundly corrupting.").

803 *See e.g. United States v. Nixon*, 418 U.S. 683 (1974).

804 In a normal case, a so-called "malicious prosecution" claim can be brought as a separate civil suit against the Government, but only after the conviction has already been overturned. *See Heck v. Humphrey*, 512 U.S. 477, 487 (1994). To establish civil liability for malicious prosecution, the accused must generally demonstrate: (a) criminal proceedings were brought without probable cause; (b) the proceedings were initiated primarily for a purpose other than bringing an offender to justice; and (c) the proceedings terminated in favor of the accused. Restatement (Second) of Torts §§ 653, 658 (2012). For example, the Federal Government has statutorily recognized and permitted suits of this type under the Federal Tort Claims Act. 28 U.S.C. § 1346(b)(1); *see* United States Attorneys' Bulletin, United

One reason for this rule is the "presumption of regularity" that attaches to prosecutorial decisions—the notion that "in the absence of clear evidence to the contrary, courts presume that [prosecutors] have properly discharged their official duties."[805] However, even this wide prosecutorial discretion is constrained by the commands of equal protection, and so "the decision whether to prosecute may not be based on an unjustifiable standard such as race, religion, or other arbitrary classification."[806] Therefore, a "selective prosecution" claim may be brought only in exceptional cases, in which the defendant can present "clear evidence" that the prosecution "had a discriminatory effect and that it was motivated by a discriminatory purpose."[807]

A number of other nations have abuse-of-power statutes that are roughly similar to Article 365. For instance, the Swiss Penal code provides: "Any member of an authority or a public official who abuses his official powers in order to secure an unlawful advantage for himself or another or to cause prejudice to another shall be liable to a custodial sentence not exceeding five years or to a monetary penalty."[808] In France, "[t]he taking of measures designed to obstruct the implementation of a law, committed by a person holding public authority in the discharge of his office, is punished by five years'

States Department of Justice, Vol. 2 No. 4, at 15 (July 2002). A party may also maintain a malicious prosecution claim under another federal statute, 42 U.S.C. § 1983, against those alleged to have wrongfully caused a prosecution, including prosecutors, police officers, and investigators. The claimant must show that the prosecution was initiated "with malice and without probable cause," and was pursued "for the purpose of denying her a specific constitutional right." *Smith v. Almada*, 640 F.3d 931, 938 (9th Cir. 2011).

805 *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926).

806 *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (quotation marks omitted).

807 *Id.* at 465.

808 Swiss Criminal Code Art. 312, available at http://legislationline.org/documents/section/criminal-codes.

imprisonment and a fine of €75,000," or up to ten years and €150,000 if the measures were "successful."[809]

However, it appears that many offenses of this type are invoked infrequently as a basis for prosecution. Or, when they are used, the charge involves allegations that the defendant has abused his or her official powers for the purpose of obtaining a direct, personal monetary benefit. In the United Kingdom, for instance, a metropolitan police commander was accused of "misconduct in public office" for assaulting and attempting to frame a business associate who owed him money.[810] And a former Bosnian ambassador was charged with "abuse of office or official authority" for misappropriating $2 million of state funds to his personal accounts.[811] An analogous American law, the federal "honest services fraud" statute, was recently construed by the Supreme Court to cover only bribery and kickback schemes.[812] Notably, however, in Iceland, former Prime Minister Geir Haard was convicted in 2012 of one count of failing to keep the Cabinet of

---

809 French Penal Code Arts. 432-1 & -2, available at http://legislationline.org/documents/section/criminal-codes. In France, the Court of Justice of the Republic recently approved an investigation into former Minister of Finance Christine Lagarde's conduct while in office, involving her alleged abuse of power for personal financial gain. *IMF chief Christine Lagarde to be investigated over controversial financial deal with tycoon,* THE TELEGRAPH, Aug. 4, 2011, http://www.telegraph.co.uk/finance/financialcrisis/8681645/IMF-chief-Christine-Lagarde-to-be-investigated-over-controversial-financial-deal-with-tycoon.html.

810 *Ali Dizaei: Met Police commander jailed for corruption*, BBC NEWS LONDON, Feb. 13, 2012, http://www.bbc.co.uk/news/uk-england-london-16979424. *See Misconduct in Public Office: Legal Guidance*, CROWN PROSECUTION SERVICE, July 31, 2012, http://www.cps.gov.uk/legal/l_to_o/misconduct_in_public_office/.

811 *Former Bosnian ambassador arrested in New York*, CNN, Mar. 25, 2003, http://articles.cnn.com/2003-03-25/justice/bosnia.ambassador_1_bosnian-ambassador-muhamed-sacirbey-bosnia-and-herzegovina?_s=PM:LAW; *See* Criminal Code of Bosnia & Herzegovina Art. 220, available at http://legislationline.org/documents/section/criminal-codes.

812 *See Skilling v. United States*, 130 S. Ct. 2896 (2010).

Iceland adequately informed of the financial crisis, with no allegation of personal gain by Haarde; he received no punishment for the conviction.[813]

When abuse-of-power statutes are used more broadly, to target behavior other than personal financial malfeasance, such prosecutions are often perceived as politically motivated. In those circumstances, authorities are typically accused of employing the law selectively. This is especially true when the law is used to target political opponents of the ruling regime. For instance, when Kazakhstani opposition leaders were prosecuted for "abuse of office" and sentenced to prison, international observers concluded that they were "apparently targeted because of their peaceful opposition activities."[814]

3. Analysis

The prosecution of a former head of government, unsuccessful presidential candidate, and leader of the opposition merits close scrutiny in all respects. In this report, we have not been asked to opine and do not opine about whether this prosecution was politically motivated or driven by an improper political objective—*i.e.*, to remove her from political life in Ukraine. Instead, we consider only whether the record of the case supports a claim under the narrow doctrine of "selective prosecution," which requires "clear evidence" that the prosecution was motivated by an improper purpose. Based on the record, Tymoshenko has not provided clear and specific evidence of political

---

[813] *Former Icelandic PM guilty of negligence*, FINANCIAL TIMES, Apr. 23, 2012, http://www.ft.com/intl/cms/s/0/f774d980-8d50-11e1-b8b2-00144feab49a.html#axzz23kkrW6Pu.

[814] Amnesty International, *Amnesty International Report 2003 – Kazakhstan*, May 28, 2003, http://www.unhcr.org/refworld/docid/3edb47d81c.html; *see* U.S. Dept. of State Archive, "Press Statement of Deputy Spokesman Philip T. Reeker" (Aug. 6, 2002) ("The United States is concerned that the conviction on August 2 by a Kazakhstani municipal court of opposition politician Galymzhan Zhakiyanov to seven years in prison for abuse of power appears to be another case of Kazakhstani authorities selectively prosecuting political figures."), available at http://2001-2009.state.gov/r/pa/prs/ps/2002/12496.htm.

motivation that would be sufficient to overturn her conviction under American standards.[815]

[815] As previously noted, Tymoshenko's Application to the ECtHR, which is currently pending, includes a claim of political prosecution in violation of Article 18 of the Convention. For the ECtHR to find a violation of Article 18, an applicant "must convincingly show that the real aim of the authorities was not the same as that proclaimed (or as can be reasonably inferred from the context). A mere suspicion that the authorities used their powers for some other purpose than those defined in the Convention is not sufficient to prove that Article 18 was breached." *Lutsenko v. Ukraine*, App. No. 6492/11, at ¶ 106 (Eur. Ct. H.R. 2012). In *Lutsenko*, the ECtHR found that the prosecution of Yuriy Lutsenko, the former Minister of Internal Affairs and a political associate of Tymoshenko, violated Article 18 because one of the grounds for the applicant's arrest, his communication with the media, constituted an improper purpose. *Id.* at ¶¶ 108-09.

V. Conclusion

After a review of the prosecution and trial of former Prime Minister Yulia Tymoshenko, we reach the following conclusions:

First, the trial court based its finding of Tymoshenko's guilt on factual determinations that had evidentiary support in the trial record. The defense contested many of the facts on which the court relied, and we express no view about those facts which were contested.

Second, Tymoshenko engaged in conduct at trial challenging the legitimacy of the process and disrupting the proceedings. She repeatedly insulted the judge, denounced the judicial process, and accused witnesses and the judge of corruption and bias. Her conduct would likely warrant sanctions in Western courts, including charges of contempt.

Third, the court's decisions not to permit the defendant to call certain witnesses and to allow important witnesses to testify while Tymoshenko was unrepresented by counsel would constitute violations of due process in Western courts.

Fourth, while Tymoshenko's behavior during trial provided a basis for the judge to impose pre-conviction detention, Western courts would criticize the trial court's lack of reasoned explanations as to why continued detention was warranted. To extend Tymoshenko's detention beyond the end of the trial until the date of her sentencing was improper.

Fifth, a Western trial court would have given Tymoshenko more time to prepare for trial, but it is unlikely that a Western appellate court would have found a violation of due process on that basis; and, as to whether Tymoshenko and her counsel had adequate

access to the case file to prepare for trial, there is insufficient evidence on this record to find any violation of due process.

Sixth, claims that Tymoshenko's due process rights were violated because of the improper selection and alleged bias of the judge, the lack of a jury trial, her removal from the courtroom, her being taken into custody during the trial on August 5, and selective prosecution have not been established on the record of this case.

Appendix

Appendix 1

Participating Attorneys

PARTICIPATING ATTORNEYS

Gregory B. Craig

Gregory B. Craig is a Partner in the Washington D.C. office of Skadden Arps Slate Meagher & Flom LLP. A trial lawyer with extensive experience in a wide variety of cases, Mr. Craig has successfully defended individuals and entities in a number of high-profile criminal and civil proceedings. Mr. Craig has served in high-ranking positions in the federal government, including as White House Counsel for President Barack Obama, Assistant to the President and Special Counsel in the White House under President William Jefferson Clinton, senior adviser on defense, foreign policy and national security issues to Senator Edward M. Kennedy, and Director of Policy Planning for Secretary of State Madeleine Albright.

Clifford M. Sloan

Clifford M. Sloan is a Partner in the Washington D.C. office of Skadden Arps Slate Meagher & Flom LLP. An experienced litigator, Mr. Sloan has litigated cases at all levels of United States federal and state courts, including six U.S. Supreme Court arguments, numerous arguments in the U.S. Courts of Appeals, and matters in trial and district courts across the country. Mr. Sloan has served in high-ranking positions in all three branches of the federal government, including experience as Associate Counsel to the President and Assistant to the Solicitor General. Mr. Sloan was a Law Clerk to Justice John Paul Stevens of the United States Supreme Court.

Margaret E. Krawiec

Margaret E. Krawiec is a Partner in the Washington D.C. office of Skadden Arps Slate Meagher & Flom LLP. Ms. Krawiec has represented clients in connection with federal and state grand jury investigations, complex civil litigation, investigations by various congressional committees and matters before federal agencies. Prior to joining Skadden, Ms. Krawiec worked as a trial attorney in the U.S. Department of Justice's Civil Division.

Allon Kedem

Allon Kedem is an Associate in the Washington D.C. office of Skadden Arps Slate Meagher & Flom LLP. Mr. Kedem was a Law Clerk to Justice Anthony Kennedy and Justice Elena Kagan of the United States Supreme Court, and served in the Office of Legal Counsel at the United States Department of Justice.

Alex R. van der Zwaan

Alex R. van der Zwaan is an Associate in the London office of Skadden Arps Slate Meagher & Flom LLP. Mr. van der Zwaan's practice focuses on representation of Western and CIS clients on a broad range of cross border transactions and disputes covering various industries and sectors. He is a fluent Russian speaker.

Alex T. Haskell

Alex T. Haskell is an Associate in the Washington D.C. office of Skadden Arps Slate Meagher & Flom LLP. Mr. Haskell's practice focuses on complex domestic and international civil and criminal litigation.

Paul M. Kerlin

Paul M. Kerlin is an Associate in the Washington D.C. office of Skadden Arps Slate Meagher & Flom LLP. Mr. Kerlin's practice focuses on complex domestic and international civil and criminal litigation.

Kara B. Roseen

Kara B. Roseen is an Associate in the Washington D.C. office of Skadden Arps Slate Meagher & Flom LLP. Ms. Roseen's practice focuses on white collar criminal defense and government enforcement actions in the United States and abroad.

Appendix 2

Key Individuals

KEY INDIVIDUALS

Azarov, Mykola
Prime Minister, Ukraine

- Testified at trial regarding the ill effects of the January 19, 2009 gas contracts.

Becker, Michael
Ex-Chief Engineer, UkrTransGaz

- Attended January 9-10, 2009 meetings between UkrTransGaz, Gazprom, and European Commission representatives; questioned during pretrial investigation regarding January 2009 stoppage of gas from Russia, January 9-10, 2009 meetings, and possible outcomes of a continued gas dispute; not permitted to testify at trial.

Bondarenko, Igor
Ex-Prosecutor General, Prosecutor General of Ukraine

- Participated in 2009-2010 review of the legality of the January 19, 2009 gas contracts; testified at trial while Tymoshenko was unrepresented by counsel.

Borodin, Konstantin
Deputy Head of the Department of Oil, Gas, Peatlands and Oil Processing Industries, and Alternative Sources of Energy, Ministry of Fuel and Energy of Ukraine

- Member of the commission that reviewed Naftogaz's financial and business activities during 2008–2009 and that developed the analysis used by prosecution for damage calculation; testified at trial while Tymoshenko was unrepresented by counsel.

Boyko, Yuriy
Minister of Fuel and Energy, Cabinet of Ministers of Ukraine

- Testified at trial regarding the effects of the January 19, 2009 gas contracts.

Didenko, Igor
Ex-Vice Chairman of the Board of Directors, Naftogaz

- Participated in January 17-18, 2009 Moscow negotiations between Naftogaz and Gazprom; part of January 19, 2009 Moscow delegation; signed three of the four January 2009 gas contracts and related documents on behalf of Naftogaz; testified at trial while Tymoshenko was unrepresented by counsel.

Dubyna, Oleh
Ex-Chairman of the Board of Directors, Naftogaz

- Negotiated with Gazprom during late 2008 and early 2009; part of January 19, 2009 Moscow delegation; signed primary January 19, 2009 gas contract with Gazprom on behalf of Naftogaz; critical witness for prosecution and testified at trial while Tymoshenko was unrepresented by counsel.

Enock, Roger
Defense Attorney for Tymoshenko, Covington & Burling LLP

- Proposed defense counsel to Tymoshenko; was not admitted to Pechersky District Court.

Feldman, Mark
Managing Director, BDO Consulting

- Proposed defense counsel to Tymoshenko; was not admitted to Pechersky District Court.

Ferenc, Bogdan
Defense Attorney for Tymoshenko

- Defense counsel to Tymoshenko; involved during pretrial investigation.

Frolov, Vadim
Chief Engineer, UkrTransGaz

- Participated in January 17-18, 2009 Moscow negotiations between Naftogaz and Gazprom; questioned during pretrial investigation regarding January 2009 gas stoppage, Naftogaz's response to same, and Moscow negotiations; not permitted to testify at trial.

Frolova, Liliya
Prosecutor, Prosecutor General of Ukraine

- Prosecutor for the Government of Ukraine throughout the Tymoshenko trial.

Ivanov, Andrei
Deputy Head of Department of Cooperation, Gas Supply and Transit, Naftogaz

- Participated in January 17-18, 2009 Moscow negotiations between Naftogaz and Gazprom; testified at trial while Tymoshenko was unrepresented by counsel.

Kireyev, Rodion
Judge, Pechersky District Court, Ukraine

- Appointed to an initial five-year "trial period" term in 2009; transferred to Pechersky District Court on April 20, 2011; presided over Tymoshenko trial from June through October 2011.

Kornyakova, Tatyana
Deputy Minister of Fuel and Energy, Ministry of Fuel and Energy of Ukraine; Ex-First Deputy Prosecutor General, Prosecutor General of Ukraine

- Managed the 2010 review of the legality of Tymoshenko's approval of the Directives for Naftogaz; testified at trial while Tymoshenko was unrepresented by counsel.

Krupko, Petro
Ex-Minister of the Cabinet of Ministers, Cabinet of Ministers of Ukraine

- Convened January 19, 2009 session of the Cabinet of Ministers of Ukraine at Turchinov's request; questioned during pretrial investigation; not permitted to testify at trial.

Kuzmin, Renat
First Deputy Prosecutor General, Prosecutor General of Ukraine
- Sits on the High Council of Justice; signed several prosecution pleadings and documents in Tymoshenko's case.

Levinsky, Mikhail
Ex-Chief of Staff, administration of Prime Minister Tymoshenko
- A member of Tymoshenko's staff; with Tymoshenko in Moscow on January 17 and January 19, 2009 one of two defense witnesses permitted to testify at trial.

Marchenko, Antonina
Director of the Cooperation Department for Natural Gas Transit and Supplies, Naftogaz
- Attended January 17-19, 2009 Moscow negotiations between Naftogaz and Gazprom; testified at trial while Tymoshenko was unrepresented by counsel.

Marchuk, Yaroslav
Ex-Director, UkrTransGaz
- Testified at trial while Tymoshenko was unrepresented by counsel regarding Ukraine's gas production, storage capacity, and reserves available during January 2009.

Medvedev, Dmitry
Current Prime Minster, Russia; Ex-President, Russia
- In February 2009, discussed transitioning to direct relations between Russia and Ukraine in gas supply and transit with then-President Yushchenko; organized January 19, 2009 Moscow summit regarding gas dispute.

Miller, Alexei
Chairman of the Board of Directors, Gazprom
- Negotiated for Gazprom against Naftogaz during late 2008 and early 2009; signed primary January 19, 2009 gas contract on behalf of Gazprom.

Mikitenko, Alexander
First Deputy Chief Prosecutor, Prosecutor General of Ukraine
- Lead Prosecutor for the Government of Ukraine throughout the Tymoshenko trial.

Nagrebelnyy, Vladimir
Deputy Director, Koretsky Institute of State and Law
- Provided expert opinion on behalf of the Koretsky Institute of State and Law that analyzed the Directives given by Tymoshenko to Dubyna in Moscow on January 19, 2009; testified at trial.

Nechvoglod, Alexander
Senior Investigator, Ukraine
- Lead Investigator for the Government of Ukraine in the Tymoshenko pretrial investigation.

Nemirya, Grigory
Ex-Vice Prime Minister of European and International Integration, Ukraine

- Vice Prime Minister under Prime Minister Tymoshenko; coordinated Tymoshenko's international efforts to resolve the 2009 Gas Crisis; questioned by Investigators during the pretrial investigation; not permitted to testify at trial.

Novitskyi, Vladimir
Ex-Minister of Industrial Policy, Cabinet of Ministers of Ukraine

- Minister of Industry Policy during the 2009 Gas Crisis; attended the Cabinet of Ministers Meetings on January 19, 2009 and January 21, 2009; testified at trial while Tymoshenko was unrepresented by counsel.

Pavlyuk,Vasiliy
Ex-Head of the Department of Documentation, Cabinet of Ministers of Ukraine

- Head of the Department of Documentation in January 2009; responsible for maintaining and utilizing the seals of the Cabinet of Ministers of Ukraine; testified at trial while Tymoshenko was unrepresented by counsel.

Plahotnyuk, Oleksandr
Defense Attorney for Tymoshenko

- Participated during portions of trial; after he submitted a complaint to the court, which was dismissed, regarding lack of time to review the case file, Tymoshenko refused his services and Judge Kireyev initiated discipline proceedings against him.

Prodan, Yuriy
Ex-Minister of Fuel and Energy, Cabinet of Ministers of Ukraine

- Minister of Fuel and Energy in 2008 and January 2009; participated in gas negotiations with the Russian delegation, including those in Moscow during January 2009; signed the Directives in Moscow on January 19, 2009; testified at trial while Tymoshenko was unrepresented by counsel.

Putin, Vladimir
Current President, Russia; Ex-Prime Minister, Russia

- Prime Minister of Russia in 2008 and January 2009; participated in one-on-one gas negotiations with Tymoshenko in January 2009.

Ratushnyak, Ivan
Ex-Vice Minister of the Cabinet of Ministers, Cabinet of Ministers of Ukraine

- Vice Minister of the Cabinet of Ministers in January 2009; attended the Cabinet of Ministers Meetings on January 19, 2009 and January 21, 2009; testified at trial while Tymoshenko was unrepresented by counsel.

Ruban, Natalia
Deputy Head of the State Audit Department, Ukraine

- Served as the administrator of the State Audit Department's report regarding the 2009 gas agreement between Ukraine and Russia; Tymoshenko's motion for Ruban to testify at trial was denied by Judge Kireyev.

Shlapak, Oleksandr
Ex-First Deputy of the Presidential Secratariat, administration of President Yushchenko

- First Deputy of the Presidential Secratariat under President Yushchenko during 2008 and January 2009; President Yushchenko's representative at meetings of the Cabinet of Ministers of Ukraine; attended meetings between President Yushchenko and Prime Minister Tymoshenko, including on the morning of January 19, 2009 in Kyiv; testified at trial.

Shorin, Mikhail
Chief Prosecutor, Prosecutor General of Ukraine

- Prosecutor for the Government of Ukraine throughout the Tymoshenko trial.

Siryy, Mykola
Defense Attorney for Tymoshenko

- Participated in portions of trial; after he submitted a complaint to the court, which was dismissed, regarding lack of time to review the case file, Tymoshenko refused his services and Judge Kireyev initiated discipline proceedings against him.

Sokolovsky, Bohdan
Ex-Advisor on Energy Security, administration of President Yushchenko

- Attended December 28, 2008 Kyiv meeting with Shlapak and Dubyna upon the latter's return from negotiations with Gazprom; part of January 17-18, 2009 Moscow delegation; was present at January 19, 2009 meeting between Tymoshenko and Yushchenko.

Stepanov, Yurii
Attorney for Didenko

- Represented witness Didenko during his appearance at Tymoshenko trial.

Sukhov, Yuriy
Defense Attorney for Tymoshenko

- Participated in portion of trial; admitted to represent Tymoshenko on August 1, 2011.

Turchinov, Oleksandr
Ex-Vice Prime Minister, Ukraine

- Vice Prime Minister under Prime Minister Tymoshenko; convened and led the meeting of the Cabinet of Ministers of Ukraine on January 19, 2009 at the request of Tymoshenko; reported the results of the meeting of the Cabinet of Ministers of Ukraine on January 19, 2009 to Tymoshenko; attended the meeting of the Cabinet of Ministers of Ukraine on January 21, 2009; one of two defense witnesses permitted to testify at trial.

Tymoshenko, Yulia
Ex-Prime Minister, Ukraine

- Former President of United Energy Systems of Ukraine; Prime Minister of Ukraine from January to September 2005 and from December 2007 to March 2010; was investigated, charged, prosecuted, and sentenced to

seven years in prison for "abuse of power" based on actions related to the signing of the 2009 gas agreement between Ukraine and Russia.

Tytarenko, Mykola
Defense Attorney for Tymoshenko

- Participated in portion of trial; admitted to represent Tymoshenko on June 29, 2011; on July 11, 2011, Tymoshenko refused his services and Judge Kireyev subsequently revoked his power of attorney.

Vlasenko, Sergiy
Defense Attorney for Tymoshenko

- Participated in pretrial investigation and portion of trial; lead defense attorney from April 11, 2011 to June 28, 2011; departed on July 4, 2011, returning on July 18, 2011; removed from the courtroom and the case by Judge Kireyev on July 18, 2011.

Yanukovych, Viktor
President, Ukraine

- President of Ukraine from February 2010 to the present.

Yekhanurov, Yuriy
Ex-Minister of Defense, Cabinet of Ministers of Ukraine

- Minister of Defense in January 2009; attended the Cabinet of Ministers Meetings on January 19, 2009 and January 21, 2009; spoke in opposition to and voted against January 19 Agreement; testified at trial.

Yushchenko, Viktor
Ex-President, Ukraine

- President of Ukraine from January 2005 to January 2010; involved in gas negotiations in 2008 and January 2009; testified at trial.

Zakharchyshyn, V.V.
Deputy Director of Department of Documentation, Cabinet of Ministers of Ukraine

- Head of the Department of Documentation in January 2009; testified at trial while Tymoshenko was unrepresented by counsel.

Appendix 3

Key Entities

KEY ENTITIES

Cabinet of Ministers of Ukraine
- o Highest body in the executive branch, comprises the Prime Minister of Ukraine, the First Vice-Prime Minister, Vice-Prime Ministers, and Ministers.

Court of Appeals
- o Intermediate appellate court in the judicial system of Ukraine, which dismissed Tymoshenko's appeal on December 23, 2011.

Court of Cassation
- o Highest court of Ukraine.

Department of Documentation
- o Subdivision of the Department of the Secretariat of the Presidential Administration, responsible for maintaining and utilizing the seals of the Cabinet of Ministers of Ukraine.

European Commission for Democracy Through Law
- o Advisory body of the Council of Europe on constitutional matters, also known as the Venice Commission.

Gazprom
- o State-owned Russian fuel and energy company.

High Council of Justice
- o Ukrainian government body of 20 members advising on the appointment, release, and discipline of judges in the judicial system of Ukraine, also known as the Supreme Court of Justice.

Highest Qualification Commission of Judges in Ukraine
- o Ukrainian government body charged with filling judicial vacancies.

Koretsky Institute of State and Law
- o Subdivision of The National Academy of Sciences of Ukraine with areas of study and research including the Ukrainian Constitution, legislation, and legal system.

Ministry of Justice
- o Subdivision of the Cabinet of Ministers of Ukraine, primary government agency tasked with realization of legal policy.

Naftogaz
- o State-owned Ukrainian fuel and energy company.

National Security Council
- o Ukrainian government body tasked with addressing national security policy on domestic and international matters.

Pechersky District Court of Kyiv
- o Trial court in the judicial system of Ukraine, which convicted Tymoshenko and found her civilly liable on October 11, 2011.

Office of the Prosecutor General of Ukraine

- Ukrainian government body in charge of prosecutions in Ukrainian courts on behalf of the State and currently led by General Prosecutor Viktor Pshonka.

RosUkrEnergo Company

- Private energy company substantially owned by Gazprom that served as an intermediary between Gazprom and Naftogaz.

Single Energy Systems of Ukraine (SESU) Corporation

- Natural gas trading company in Ukraine, also known as United Energy Systems of Ukraine (UESU), whose predecessor company was started by Tymoshenko.

State Audit Department

- Subdivision of the Cabinet of Ministers of Ukraine, which completed its own independent report addressing the January 2009 agreement.

Temporary Inquiry Commission to Investigate Circumstances of the Signing of Gas Contracts between NAK "Naftogaz of Ukraine" and OAO "Gazprom" Concerning the Signs of High Treason in the Sphere of Ukraine's Economic Security

- Commission formed by Ukraine's parliament, the Verkhovna Rada, tasked with investigating the January 2009 agreement.

UkrTransGaz

- Subsidiary company of NAK Naftogaz Ukraine, the state-owned Ukrainian fuel and energy company.

Verkhovna Rada

- National parliament of Ukraine.

Appendix 4

Individuals Interviewed by Skadden

INDIVIDUALS INTERVIEWED BY SKADDEN

NAME	TITLE
Andreyev, Petro	*Head of the State Audit Department, Ukraine*
Azarov, Mykola	*Prime Minister, Ukraine*
Bayrachny, Andrey	*Investigator, Prosecutor General of Ukraine*
Borodin, Konstantin	*Deputy Head of the Department of Oil, Gas, Peatlands and Oil Processing Industries, and Alternative Sources of Energy, Ministry of Fuel and Energy of Ukraine*
Boyko, Yuriy	*Minister of Fuel and Energy, Cabinet of Ministers of Ukraine*
Didenko, Igor	*Ex-Vice Chairman of the Board of Directors, Naftogaz*
Dubyna, Oleh	*Ex-Chairman of the Board of Directors, Naftogaz*
Frolov, Vadim	*Chief Engineer, UkrTransGaz*
Frolova, Liliya	*Prosecutor, Prosecutor General of Ukraine*
Ivanov, Andrei	*Deputy Head of Department of Cooperation, Gas Supply and Transit, Naftogaz*
Kireyev, Rodion	*Judge, Pechersky District Court, Ukraine*
Krupko, Petr	*Ex-Minister of the Cabinet of Ministers, Cabinet of Ministers of Ukraine*
Kuzmin, Renat	*First Deputy Prosecutor General, Prosecutor General of Ukraine*
Levinsky, Mikhail	*Ex-Chief of Staff, administration of Prime Minister Tymoshenko*
Mikitenko, Alexander	*First Deputy Chief Prosecutor, Prosecutor General of Ukraine*
Nemirya, Grigory	*Ex-Vice Prime Minister of European and International Integration, Ukraine*
Ruban, Natalia	*Deputy Head of the State Audit Department, Ukraine*
Shlapak, Oleksandr	*Ex-First Deputy of the Presidential Secratariat, administration of President Yushchenko*
Shorin, Mikhail	*Chief Prosecutor, Prosecutor General of Ukraine*
Turchinov, Oleksandr	*Ex-Vice Prime Minister, Ukraine*
Tymoshenko, Yulia	*Ex-Prime Minister, Ukraine*
Tytarenko, Mykola	*Defense Attorney for Tymoshenko*
Vlasenko, Sergiy	*Defense Attorney for Tymoshenko*
Yekhanurov, Yuriy	*Ex-Minister of Defense, Cabinet of Ministers of Ukraine*
Yushchenko, Viktor	*Ex-President, Ukraine*

Appendix 5

Judgment in the Name of Ukraine
(Oct. 11, 2011)

[UNOFFICIAL TRANSLATION]

DUPLICATE

JUDGMENT
IN THE NAME OF UKRAINE

October 11, 2011 City of Kyiv Case No. 1-657/11

The Pechersky District Court of the City of Kyiv, composed of:
the Presiding Judge: R. V. Kireyev,
at the presence of the Secretary: Ya. V. Tabala,
with the participation of Prosecutors: A. L. Bayrachny, O. I. Mikitenko, L. O. Frolova, M. O. Shorin,
Defense (attorneys): S. V. Vlasenko, O. A. Plakhotnyuk, Yu. M. Sukhov, M. I. Siryy, M. M. Tytarenko,
Defense (close relatives): Ye. O. Kar, O. H. Tymoshenko,
Representatives of the Civil Claimant: I. Yu. Kost, V. V. Kunytskyy, V. V. Skopich
Defense (witnesses): O. M. Kovalchuk, I. V. Stepanov,
having considered in open court session in the courtroom located in the City of Kyiv the case against

> **Yulia Volodymyrivna Tymoshenko**, born on November 27, 1960, Ukrainian, citizen of Ukraine, native of the City of Dnipropetrovsk, having higher education, married, the Head of the political party *Vseukrayinske Obyednannya Batkivshchyna* [The Ukrainian National Union "Fatherland"], previously not convicted, registered at the following address: 39 Prospekt Karla Marksa, Apt. 32, Dnipropetrovsk, *de facto* temporarily residing at: 5 Vul. Starokyivska, Village of Kozyn, Obukhivskyy District, Kyiv Region, 15 Vul. Turivska, Kyiv,

- on charges of committing a crime in violation of the Criminal Code of Ukraine, Art. 365 (3), -

FOUND AS FACT:

In January 2009, Yu. V. Tymoshenko, holding the office of the Prime Minister of Ukraine, being an official, in violation of the requirements of Art. 19 of the Constitution of Ukraine, criminally misused the rights granted to her and her official position and, acting intentionally, committed acts, which were expressly outside the scope of her authority and powers, resulting in grave consequences.

The crime of Yu. V. Tymoshenko was committed under the following circumstances.

Starting December 18, 2007, Yu. V. Tymoshenko held the office of Prime Minister of Ukraine and as such was vested with powers of government, organizational and administrative authority to manage the Cabinet of Ministers of Ukraine activities by directing them to implementation of the Program of Activities of the Cabinet of Ministers of Ukraine as approved by the *Verkhovna Rada* [Parliament] of Ukraine, which powers she had to exercise by complying with the basic principles and the procedure established by the Constitution of Ukraine, Law of Ukraine

"On the Cabinet of Ministers of Ukraine" (No. 279-VI, dated May 16, 2008, as in force in January 2009) and

the Rules of the Cabinet of Ministers of Ukraine approved by Resolution of the Cabinet of Ministers of Ukraine No. 950, dated July 18, 2007.

Pursuant to Article 2, Part 2, of the Agreement Between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on Additional Measures to Procure Russian Natural Gas Transit via the Territory of Ukraine, dated October 4, 2001, ratified by Law of Ukraine No. 2797-III, dated November 15, 2001, which became effective for Ukraine on December 20, 2001, it is provided that volumes of the Russian natural gas transit via the territory of Ukraine and payment amounts in money terms, and/or volumes of natural gas delivery on account of payments for such transit shall be adjusted based on annual Intergovernmental protocols for the respective years.

Pursuant to the President of Ukraine's Decree No. 165/2008, dated February 26, 2008, in order to ensure implementation of the agreements between the President of Ukraine V. A. Yushchenko and the President of the Russian Federation V. V. Putin on the transition to direct co-operation arrangements in the sphere of natural gas, reached during the working visit of the Head of State to the Russian Federation and the second meeting of the Ukrainian-Russian Intergovernmental Commission held on February 12, 2008, the Directives for the delegation of Ukraine in negotiations with the Russian Federation on the transition to direct co-operation arrangements in the sphere of natural gas were approved.

In accordance with the Directives approved by the President of Ukraine's Decree No. 165/2008, dated February 26, 2008, in October 2008–January 2009, the delegation of National Joint Stock Company Naftogaz of Ukraine (Naftogaz of Ukraine NJSC) conducted negotiations in Moscow, the Russian Federation, with Open Joint Stock Company Gazprom (Gazprom JSC) on direct sales of natural gas to Ukraine in 2009, based on which, as of December 30, 2008, the Ukrainian side agreed a preliminary arrangement between Naftogaz of Ukraine NJSC and Gazprom JSC on the natural gas price for Naftogaz of Ukraine NJSC in the amount of $235 per 1 thousand cubic meters of natural gas and on the cost of transit in the amount of $1.8 for transportation of 1 thousand cubic meters of natural gas per 100 km distance. Based on the results of the negotiations, the draft contract was prepared with the duration of 1 year, which had to be signed by the parties on December 31, 2008.

In the meantime, upon an official statement made by A. B. Miller, Chairman of the Board of Gazprom JSC, by which he announced the final price of natural gas for Naftogaz of Ukraine NJSC in the amount of $320 per 1 thousand cubic meters and informed that the gas sale contract at the price of $235 per 1 thousand cubic meters will not be concluded, O. V. Dubyna, Chairman of the Board of Naftogaz of Ukraine NJSC, considering the stated price to be unreasonably high, held a meeting with the delegation and, without signing the contract, returned to Ukraine, having notified of that the President of Ukraine V. A. Yushchenko and the Prime Minister of Ukraine Yu. V. Tymoshenko.

On January 1, 2009, the Contract on natural gas sale to Ukraine in 2008 at the price of $179.5 per 1 thousand cubic meters and with the rate for natural gas transit via the territory of Ukraine in the amount of $1.7 per 1 thousand cubic meters per 100 km distance, made between Naftogaz of Ukraine NJSC and RosUkrEnergo AG, expired.

During the period of January 1, 2009, to January 17, 2009, the Russian side suspended the natural gas delivery for Ukraine and for transit to the European customers. The gas transportation system of Ukraine worked in

the reverse mode, i.e. natural gas was delivered to the consumers in the east of Ukraine from the gas storages located in the west.

On January 17, 2009, in order to conduct negotiations with the Russian side, the Governmental delegation of Ukraine headed by the Prime Minister of Ukraine Yu. V. Tymoshenko arrived in Moscow, she personally met with the chief officials of the Russian Federation Government and the management of Gazprom JSC. During that meeting, the Russian side representatives stated that Gazprom JSC intends to sell natural gas to Ukraine at the price, which will be determined according to a special formula, which will use the base price level of $450 per 1 thousand cubic meters.

At the meeting, which took place on January 18, 2009, upon the Prime Minister of Ukraine Yu. V. Tymoshenko's return from Moscow, the President of Ukraine V. A. Yushchenko, considering the natural gas inventories available in Ukraine at the time, which allowed to meet the needs of the Ukrainian consumers, instructed to continue the contract negotiations on acceptable for Ukraine terms.

At the same time, Yu. V. Tymoshenko, wishing to use the crisis situation which aroused after expiration on January 1, 2009, of the Contract made between Naftogaz of Ukraine NJSC and RosUkrEnergo AG on natural gas sale to Ukraine in 2008 and the suspension of the natural gas supply to Ukraine and for transit to the European countries for her personal advantage, acting intentionally, while realizing the groundlessness and unreasonableness of the Russian side's demands at the negotiations with her participation and participation of the chief officials of the Russian Federation Government and the management of Gazprom JSC and Naftogaz of Ukraine NJSC to raise the cost of natural gas for Ukraine while leaving the rate for its transit unchanged, wishing to create her own positive image as an effective leader of state, who managed to resolve the "gas crisis" in the relationship with the Russian Federation right before the presidential elections in Ukraine, decided to agree with the above, unfavorable for Ukraine, terms and, by any means, including abuse of the official position, to ensure conclusion between Naftogaz of Ukraine NJSC and Gazprom JSC of the Natural Gas Purchase and Sale Contract and the Contract for Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019, showing her irresponsible attitude towards the consequences of her actions and inflicting pecuniary damage to the state.

Yu. V. Tymoshenko had working experience in the Cabinet of Ministers of Ukraine and, holding the office of the Prime Minister of Ukraine, understood that, pursuant to Article 117 of the Constitution of Ukraine, the Cabinet of Ministers of Ukraine, within the scope of its competence, shall issue resolutions and orders, which are legally binding. At the same time, pursuant to the Rules of the Cabinet of Ministers of Ukraine, Sec. 6 (1) (6), draft versions of directives shall be evaluated at the sessions of the Cabinet of Ministers of Ukraine and, pursuant to Sec. 46 (2) of the Rules (as in force in January 2009), on approval of directives, orders of the Cabinet of Ministers of Ukraine shall be issued.

This notwithstanding, on January 18, 2009, Yu. V. Tymoshenko, in violation of Articles 19, 114, 117 of the Constitution of Ukraine, Article 44 of Law of Ukraine "On the Cabinet of Ministers of Ukraine" No. 279-VI, dated May 16, 2008 (as amended from time to time), Sections 6 and 46 of the Rules of the Cabinet of Ministers of Ukraine, acting intentionally

while being on the premises of the Cabinet of Ministers of Ukraine at 12/2, Vul. Hrushevskoho, Kyiv, prepared and ordered to unidentified by the investigation persons to type an executive document—the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019. These Directives list principal tasks for the Naftogaz of Ukraine NJSC delegation, in particular:

- in concluding the Natural Gas Purchase and Sale Contract for 2009–2019 for consumers in Ukraine, to follow the terms of natural gas purchase under a direct contract signed with Gazprom JSC, using a price formula, which shall account for basic oil product components used in the European countries (heating oil, petroleum gas oil), providing, in 2009, for a 20% discount from the natural gas base price level, which was determined based on the result of agreements reached between the Prime Ministers of Ukraine and the Russian Federation on January 17, 2009, in the amount of $450 per 1 thousand cubic meters;

- in the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019, to provide for the payment rate for transit services in 2009 in the amount of $1.7 per 1 thousand cubic meters per 100 km distance.

Yu. V. Tymoshenko knew that Naftogaz of Ukraine NJSC, pursuant to its Statute and the Law of Ukraine "On Companies" is an independent economic entity and that she, as the Prime Minister of Ukraine, may not intervene in its activities and give orders in any form regarding making agreements in the course of business, and she was, as well, aware that the terms she included in the Directives for signing the above Contracts were economically unfavorable and unacceptable for Ukraine and would result in infliction of damage to the state.

After preparation of the above Directives while being physically on the premises of the Cabinet of Ministers of Ukraine at the above address, the Prime Minister of Ukraine Yu. V. Tymoshenko, continuing committing acts of misuse of her power and official position, personally approved those Directives and affixed thereon the seal of the Cabinet of Ministers of Ukraine.

Yu. V. Tymoshenko, being aware of the unlawfulness of her actions and wishing to make the Cabinet of Ministers of Ukraine responsible for approval of the Directives, which contained the expressly disadvantageous for Ukraine provisions regarding the natural gas price and rate for transit, gave a copy of the Directives to O. V. Turchinov, First Vice Prime Minister of Ukraine, to have them approved at the session of the Cabinet of Ministers of Ukraine on January 19, 2009.

At the session of the Cabinet of Ministers of Ukraine on January 19, 2009, the members of the Cabinet of Ministers of Ukraine refused to support the expressly disadvantageous for Ukraine Directives and, for this reason, the draft Order of the Cabinet of Ministers of Ukraine titled "Regarding Naftogaz of Ukraine NJSC foreign economic activities," by which the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019 were supposed to be approved, was not

brought up for vote by the First Vice Prime Minister of Ukraine O. V. Turchinov.

Yu. V. Tymoshenko, knowing for a fact that the Cabinet of Ministers of Ukraine refused to support the Directives, acting intentionally, being aware that the terms she included in the Directives for signing the Gas Purchase and Sale Contract for 2009–2019 for consumers in Ukraine and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019 were economically unfavorable and unacceptable for Ukraine and would result in infliction of damage to the state, on January 19, 2009, while visiting in Moscow and taking part in the negotiations as the head of the Governmental delegation, misusing the rights granted to her and her official position, being aware of the unlawfulness of her actions, being in the House of the Government of the Russian Federation in Moscow, at or about 5:00 p.m., after the Chairman of the Board of Naftogaz of Ukraine NJSC O. V. Dubyna refused to sign the Natural Gas Purchase and Sale Contract and the Contract for Natural Gas Transit on the terms proposed by the Russian side, instructed O. V. Dubyna on their signature and gave him the above legally binding Directives, while providing him with inaccurate information that the provisions of those Directives were approved on January 19, 2009, under the corresponding Order of the Cabinet of Ministers of Ukraine.

Assuming that the Directives approved by the Prime Minister of Ukraine Yu. V. Tymoshenko are legally binding, the Chairman of the Board of Naftogaz of Ukraine NJSC O. V. Dubyna signed Natural Gas Purchase and Sale Contract between Naftogaz of Ukraine NJSC and Gazprom JSC No. KP, dated January 19, 2009, and I. M. Didenko, his first deputy, signed Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019 No. TKHU, dated January 19, 2009.

The conclusion on the basis of the above Directives approved by the Prime Minister of Ukraine Yu. V. Tymoshenko, as well as the further fulfillment of the terms of Natural Gas Sale Contract between Naftogaz of Ukraine NJSC and Gazprom JSC No. KP, dated January 19, 2009, and Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019 No. TKHU, dated January 19, 2009, in violation of the terms of the Agreement Between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on Additional Measures to Procure Russian Natural Gas Transit via the Territory of Ukraine, dated October 4, 2001 (ratified by Law of Ukraine No. 2797-III, dated November 15, 2001), which is an integral part of the Ukrainian legislation, resulted in grave consequences for the state as represented by Naftogaz of Ukraine NJSC in terms of increased purchase costs of 3.639 billion cubic meters of imported natural gas for production and technological needs by the amount of $194,625,386.70, or UAH 1,516,365,234.94, required to ensure normal operation of the gas transportation system for transit of the Russian natural gas via the territory of Ukraine, and inflicted damages equal to the above amount, which is more than 250 times the minimal tax exempt individual income.

During the court proceedings, Yu. V. Tymoshenko, the Defendant, did not plead guilty of committing the alleged crime, nor did she recognize in full the claim brought against her and testified that, indeed, on January 19, 2009, in Kyiv, at the request of O. V. Dubyna, Chairman of the Board of Naftogaz of Ukraine NJSC, she issued a separate order to the Minister

of Fuel and Energy of Ukraine and, as an attachment to it, the approved Directives of the Prime Minister of Ukraine for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on conclusion of the Natural Gas Purchase and Sale Contract for 2009–2019. The Directives were not required and were approved at the request of Naftogaz of Ukraine NJSC in order to formalize the outcome of the negotiation process with the Governmental delegation of the Russian Federation. She formalized the outcome of the negotiation process as an order. This document, a separate order to the Minister of Fuel and Energy of Ukraine with attachment of the Directives of the Prime Minister of Ukraine for the delegation of Naftogaz of Ukraine NJSC, is not an entitling document, this document is not a regulatory instrument, this document has a status of the Prime Minister of Ukraine executive document integrating the legal will set forth in other legal documents, which were accepted long before January 19, 2009. This document does not define the final comprehensive details for conclusion of respective foreign economic contracts. This document merely redirected the legal will previously formalized by other entitling documents to framework parameters for conducting negotiations between delegations of Naftogaz of Ukraine NJSC and Gazprom JSC and provided legal possibility for the delegation of Naftogaz of Ukraine NJSC, by way of negotiations with Gazprom JSC in preparation of drafts of respective foreign economic contracts, to reach better terms of natural gas sale and transit from the perspective of the Ukrainian interests.

During the court proceedings, Yu. V. Tymoshenko, the Defendant, stated that she never told O. V. Dubyna, Chairman of the Board of Naftogaz of Ukraine NJSC, that the decision to sign the contract on such terms as determined in the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019 was made at the session of the Government held on January 19, 2009. She believes that, as the Prime Minister of Ukraine, she had nothing to do with the gas contract between Naftogaz of Ukraine NJSC and Gazprom JSC No. KP, for natural gas purchase and sale in 2009–2019, and No. TKHU, for volume and terms of natural gas transit via the territory of Ukraine for the period of 2009–2019. The contracts were signed by representatives of Naftogaz of Ukraine NJSC, who on their own conducted negotiations, defined the contractual terms, agreed wording of the contracts with the Russian side, etc.

Yu. V. Tymoshenko, the Defendant, believes that the case material lacks evidence of any constituent element of offence as specified by the Criminal Code of Ukraine, Art. 365 (3), and the fact of offence is rebutted by the case material.

However, the statements of Yu. V. Tymoshenko have been refuted, and her guilt of committing the crime has been fully proved by the evidence investigated during the court proceedings.

In particular, by the testimony of witness O. V. Dubyna, who stated that, in January 2009, he held the position of Chairman of the Board of Naftogaz of Ukraine NJSC. During the negotiations with A. B. Miller, Chairman of the Board of Gazprom JSC, in December 2008, regarding the price of natural gas and its transit for 2009, the Russian side

offered the price of gas in the amount of $235 per 1,000 cubic meters and $1.8 as the cost of transit. After the Russian side, on December 31, 2008, announced the natural gas price of $320 per 1 thousand cubic meters the negotiations were stalled and the Ukrainian delegation left for Ukraine. On January 1, 2009, the Russian side completely stopped delivery of natural gas for Ukraine and, from January 4, 2009, the pumping of gas was shut off entirely, that is, gas was also not delivered anymore for the European customers. The further negotiations brought no results.

The witness confirmed his testimony given during the pre-trial investigation to the effect that, on January 18, 2009, the delegation of Naftogaz of Ukraine NJSC flew to Moscow to participate in further negotiations with Gazprom JSC. During his meeting with A. B. Miller, he understood that the Russian side's position would not change and they would insist on the base price of $450 per 1 thousand cubic meters. O. V. Dubyna considered such terms unacceptable for Naftogaz of Ukraine NJSC. On the following day, January 19, 2009, he met with Yu. V. Tymoshenko at a summit concerning the gas issue organized by the President D. A. Medvedev and, after that, they departed to the House of the Government of the Russian Federation. On their way, he told Yu. V. Tymoshenko that he would refuse to sign a contract on such terms, because he considered them absolutely unacceptable, without a decision of the Government, on which Yu. V. Tymoshenko assured him that such a decision would be provided. Later, on the same day, already inside the House of the Government of the Russian Federation, Yu. V. Tymoshenko provided him with the Government Directives, dated January 19, 2009, approved, that is signed by her personally and with the seal of the Cabinet of Ministers of Ukraine affixed, on conclusion of the agreement with Gazprom JSC at the base price of $450 per 1 thousand cubic meters of natural gas and at the cost of transit of $1.7 for transportation of 1 thousand cubic meters of natural gas per 100 km distance. He is sure that the Directives bore the signature of Yu. V. Tymoshenko (not a facsimile) and the blue impression of the Cabinet of Ministers of Ukraine seal. The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019 were considered by him as a mandatory document from the Cabinet of Ministers of Ukraine, which entitled him to sign the contract on the above terms. When Yu. V. Tymoshenko provided him with the Directives, he refused to sign the contract without a decision of the Government, on which Yu. V. Tymoshenko told him, in peremptory terms, that in case of his refusal, she would dismiss him from his job. In addition, she advised him that she provided the directive approved by her for this purpose. Based on the expert opinions and his own experience, he thinks that by using the natural gas available in the storages the country could hold out until the end of February without buying gas from Russian at all.

During the court proceedings, witness O. V. Dubyna stated that the folder with documents from Yu. V. Tymoshenko was first given to him and thereafter Yu. V. Prodan received it, signed the Directives and returned [them] to him.

By the testimony of witness I. M. Didenko, who in January 2009, held the position of First Deputy Chairman of the Board of Naftogaz of Ukraine NJSC and confirmed before the Court that starting I quarter of 2008, he in accordance with his official duties, took part on a regular basis in negotiations, consultations and discussions with

representatives of Gazprom JSC regarding the transition to direct contractual relations between Naftogaz of Ukraine NJSC and Gazprom JSC. These negotiations were conducted on the instructions from the Ukrainian Government and, also, they were provided for by decisions of the National Security and Defense Council of Ukraine and the respective agreements between the Presidents of both countries. In 2008, we managed to change our status and become a natural gas importer. Meanwhile, the delegation of Naftogaz of Ukraine NJSC left the building of Gazprom JSC on December 31, 2008, and, as of January 1, 2009, no natural gas sale contract was signed.

On January 17, 2009, the witness arrived to Moscow as a member of the Governmental delegation, and this was the first attempt to continue the dialog after the negotiations were terminated on December 31, 2008. On January 18, 2009, at or about 2:30 p.m. Moscow time, the Prime Minister of Ukraine and the Prime Minister of the Russian Federation released the outcome of negotiations. The delegation of Naftogaz of Ukraine NJSC was instructed to remain in Moscow to work out all issues. On January 19, 2009, they received information that the Prime Minister of Ukraine would return to Moscow and continue the negotiations. They met with the other part of the delegation of Naftogaz of Ukraine NJSC, which arrived from Kyiv, already in the House of the Government of the Russian Federation. O. V. Dubyna, Chairman of the Board of Naftogaz of Ukraine NJSC, told the witness that, without the instruction from the country's leadership, no document would be signed. On January 19, 2009, O. V. Dubyna, gave him the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019 for review. The witness considered the Directives as approved by the Prime Minister of Ukraine with the seal of the Cabinet of Ministers of Ukraine affixed and mandatory. Thereafter, one natural gas purchase and sale contract was signed in the House of the Government of the Russian Federation and later four more contracts were signed on the Gazprom JSC premises. The transit contract was signed on January 19, 2009, and three contracts: right of assignment of KPPHG-1 and KPPHG-2 were signed on January 20, 2009. These three contracts signed on the night of January 19, 2009–January 20, 2009 concerned the mechanism of repayment of the RosUkrEnergo debt to Gazprom JSC and compensation of these costs by Naftogaz of Ukraine NJSC. That is, sufficient documents were signed to start the supply of gas to Europe and Ukraine in the evening of January 19, 2009, namely: the gas purchase and sale contract and the transit contract. Meanwhile, the gas supply was renewed only after the agreements on repayment of the RosUkrEnergo debt were signed. This suggests that the Gazprom JSC management linked these two events very closely.

By the testimony of witness A. I. Marchenko, who holds the position of Director of the Co-operation Department for Natural Gas Transit and Supplies at Naftogaz of Ukraine NJSC and who stated that on January 17, 2009, she flew to Moscow as a member of the delegation of Naftogaz of Ukraine NJSC to negotiate with Gazprom JSC. On January 18–19, 2009, the negotiations were conducted between the working groups of Naftogaz of Ukraine NJSC and Gazprom [JSC], at which draft versions of the contracts presented by the Russian side were discussed. Every article and circumstances of the transit contract and the gas purchase and sale contract were discussed. For practical purposes, the gas price formula was not discussed as a matter to be decided only at the level of the Prime Ministers of Ukraine and the Russian Federation. The proposed

formula for calculation of gas price was known, but it was unclear why it was proposed to apply it as early as from 2009, and not from 2011 as was previously planned. The high base price of gas of $450 was a surprise too. On January 19, 2009, the delegation received the Directives signed by the Prime Minister of Ukraine with the base price of gas of $450, which the members of the delegation considered as mandatory document. The base price of $450 has contributed to the current high gas price.

By the testimony of witness Yu. L. Voytovych, who, in January 2009, held the position of Deputy Head of the Division of Economics and Pricing Policy in Naftogaz of Ukraine NJSC and who confirmed before the Court that, in January 2009, he was included in the delegation of Naftogaz of Ukraine NJSC, which departed for Moscow to sign the natural gas purchase contract and the contract for natural gas transit via the territory of Ukraine. He participated in the evaluation of draft versions of the contracts, which were presented during the negotiations in Moscow. It was on January 19, 2009, when the base price of $450 per 1,000 cubic meters of natural gas appeared in a draft version of the contract proposed by the Russian side, and the Russian side provided no explanations of such a price. On January 19, 2009, in the room where the negotiations with the Russian side took place, he had an opportunity to review the Directives. During the negotiations in which he participated, the price of gas was not discussed, it was an accomplished fact, only technical terms of the contracts were at stake.

By the testimony of witness A. V. Kobolev, who was a member of the delegation, which together with the Prime Minister of Ukraine Yu. V. Tymoshenko departed to Moscow on January 17, 2009, and was present at the negotiations with Gazprom [JSC] on the conclusion of the contracts for gas supply and its transit, confirmed before the Court that the document titled "The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019" was given to the members of the Ukrainian delegation for their review before the contracts with Gazprom JSC were signed.

By the testimony of witness A. V. Ivanov, who was a member of the delegation, which together with the Prime Minister of Ukraine Yu. V. Tymoshenko departed to Moscow on January 17, 2009, was present at the negotiations with Gazprom JSC and informed the Court, that the Ukrainian side based its positions at the negotiations on the terms of the Memorandum signed in October and on the terms of the agreement signed after the conclusion of the Memorandum, and for that reason, the gas price of $450 per 1,000 cubic meters was incommensurable with the prior agreements reached by the parties.

By the testimony of witness K. I. Hryshchenko, who, during the period from June 10, 2008 to March 11, 2010, held the position of Ambassador Extraordinary and Plenipotentiary of Ukraine in the Russian Federation and who confirmed before the Court that, on January 17–18, 2009, a working visit of the Prime Minister of Ukraine Yu. V. Tymoshenko to Moscow took place, where an international conference on providing the Russian natural gas for consumers in Europe was under way. The Ukrainian side was represented at the conference by the Prime Minister of Ukraine Yu. V. Tymoshenko and the Authorized Representative of the President of Ukraine on International Energy Security Issues, Bohdan

Sokolovsky. The Embassy of Ukraine in the Russian Federation provided, on an operational basis, ceremonial and organizational support for the delegation. The Ministry of Foreign Affairs of Ukraine had not received any directives or terms of reference for the working visit of the Prime Minister of Ukraine Yu. V. Tymoshenko to the Russian Federation or for the conclusion of contracts between Naftogaz of Ukraine NJSC and Gazprom JSC. The Prime Minister of Ukraine Yu. V. Tymoshenko did not inform anybody about the actions she resorted to in the course of the negotiations, neither about the progress in the negotiations or their outcome, nor about the existence of the Directives.

By the testimony of witness Yu. I. Yekhanurov, who, at the beginning of 2009, held the position of Minister of Defense of Ukraine and stated during the court proceedings that, at the extraordinary session of the Government of Ukraine on January 19, 2009, the First Vice Prime Minister of Ukraine O. V. Turchinov suggested to the members of the Government to approve the Directives for the negotiations in Moscow. At the session of the Government a draft order on approval of the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019 was presented. When the witness read the provided materials regarding the conclusion of contracts, he realized that on the three basic parameters—the volumes of supply, the gas price and the tariff rate for transit—the Ukrainian side virtually would not make any gains, in fact would recede from its positions both with regard to the price and to the tariff rate for transit, as well as the volumes of gas, and disagreeing with the figures provided, lodged his objection and left the session of the Government.

He considers that such agreements could only be concluded due to the dependence on the other contracting party and believes that the dependence in the actions of the Prime Minister of Ukraine Yu. V. Tymoshenko might be related to the problems of the repayment of debts of UESU Corporation and the associated criminal case, in which about nine people were convicted in the Russian Federation.

The witness stated that, at the session of the Government on January 21, 2009, during the discussion on the issue of approval of the Ukrainian delegation actions at the negotiations in Moscow, no documents or texts of the concluded contracts were furnished. The approval had purely public nature.

By the testimony of witness Yo. V. Vinskyy, who in 2008–2009 held the position of Minister of Transport and Communications of Ukraine and informed the Court that, on January 19, 2009, he attended the extraordinary session of the Government, devoted to the discussion of the issue of negotiations on the contracts for supply of gas, which were held in Moscow. Considering that the price of gas announced at the session of the Government was too high, he deemed it necessary to maintain the position of lowering the gas price. At the session of the Government on January 19, 2009, following the discussion, the First Vice Prime Minister of Ukraine O. V. Turchinov explained that, due to lack of consensus concerning the issue among the members of the Government, there was no need to make any decision on the issue, because the Directives of the Government were not binding and did not even bring up the issue for vote due to lack of consensus among the members of the Government.

By the testimony of witness I. O. Vakarchuk, who in 2008–2009 held the position of Minister of Education and Science of Ukraine and confirmed before the Court his testimony given during

the pre-trial investigation to the effect that approval of any directives has always taken place at the sessions of the Cabinet of Ministers of Ukraine. First, directives were always discussed and then voted on. If they received a "positive" vote, i.e. when more than a half of the members of the Government voted "for," such directives were considered accepted (approved). On January 19, 2009, the witness participated in the extraordinary session of the Cabinet of Ministers of Ukraine. This session was chaired by the O. V. Turchinov, the First Vice Prime Minister of Ukraine. In the witness's opinion, this session of the Government was needed to brief all members of the Cabinet of Ministers on the Directives, which later had to become a cornerstone of negotiations with the Russian side on the terms of gas supplies to Ukraine and its transit, and subsequently get this document approved at the same session. The members of the Government were provided with a draft version of the Directives, which had to be approved. The discussion of this issue took pretty long time and was fairly active. The members of the Government expressed different views, including those regarding the disadvantages of the proposed terms and the need for more clarity in the document (the Directives), which was discussed and had to be eventually adopted. Ultimately, the chair of the session did not bring up the issue of approval of the Directives to vote and, accordingly, these Directives were not endorsed (approved) at the session of the Government.

By the testimony of witness V. S. Ohryzko, who, from December 2007 to March 2009, served as Minister of Foreign Affairs of Ukraine and informed the Court that, on January 19, 2009, he attended the extraordinary session of the Cabinet of Ministers of Ukraine, devoted to the discussion of the issue of negotiations on the contracts for supply of gas, which were held in Moscow. Before the session on January 19, 2009, the members of the Government received a draft version of the Directives for the delegation of Naftogaz of Ukraine NJSC. The draft version contained no details, signatures or seals. On January 19, 2009, the Government did not make a decision regarding the Directives on the conclusion of contracts with Gazprom JSC, because a number of ministers objected endorsing that issue and there was no majority for approval of the Directives. The witness believes that the natural gas purchase and sale contract and the transit contract signed on January 19, 2009, did not serve the national interests of Ukraine as the gas price was too high.

By the testimony of witness Yu. O. Pavlenko, who, from December 2007 to March 2010, served as Minister of Ukraine for Family, Youth and Sports and who testified before the Court that he attended the session of the Cabinet of Ministers of Ukraine on January 19, 2009. The issue of the negotiations on the terms of gas supply to Ukraine and its transit, carried out by the Prime Minister of Ukraine Yu. V. Tymoshenko with the Russian side, was on the agenda. As a result of the discussion, which emerged on the issues of discussion of the said issue [sic], the Prime Minister found no support.

At the session of the Cabinet of Ministers of Ukraine on January 21, 2009, no contracts for natural gas purchase and sale in 2009–2019 and for its transit via the territory of Ukraine were distributed; therefore, the witness did not vote for approval of the Ukrainian delegation actions during the working visit of the Prime Minister of Ukraine to the Russian Federation on January 17–20, 2009, and of the agreements reached,

because no specific information was provided. It became known of the agreements solely from the oral information released by the Prime Minister of Ukraine.

By the testimony of witness V. M. Shandra, who, from December 2007 to March 2010, served as Minister of Emergencies of Ukraine and who confirmed before the Court that, on January 19, 2009, he attended the extraordinary session of the Government, which was chaired by O. V. Turchinov, the First Vice Prime Minister of Ukraine, and where the issue of conclusion of the natural gas supply and transit contracts was discussed. At the session, a draft version of the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019 was distributed. The materials were handed out without any accompanying sheet or explanations from the Ministry of Fuel and Energy or Ministry of Economy of Ukraine. After the discussion of the draft Directives, O. V. Turchinov, the First Deputy Prime Minister, informed the members of the Government that the approval of the Directives was not needed, because the Prime Minister of Ukraine may decide on her own.

At the session of the Government on January 21, 2009, the witness did not vote for approval of the decision to approve [sic] the outcome of the negotiations carried out by the Ukrainian Governmental delegation in Moscow, because no texts of contracts that would clearly show the formula for calculation of gas price were provided at the session.

By the testimony of witness V. S. Novytskyy, who, from December 2007 to March 2010, served as Minister of Industrial Policy of Ukraine and who confirmed that during the extraordinary session of the Cabinet of Ministers of Ukraine on January 19, 2009, O. V. Turchinov, the First Vice Prime Minister of Ukraine, informed the members of the Cabinet of Ministers of Ukraine about progress of the negotiations on the terms of gas supply to Ukraine and its transit, carried out by the Prime Minister of Ukraine Yu. V. Tymoshenko with the Russian side. O. V. Turchinov, the First Vice Prime Minister of Ukraine, said that the Russian side proposed the price of gas in the amount of $450 per 1,000 cubic meters. The proposed price was too high and unacceptable for Ukraine's economy.

The witness fully confirmed his testimony given during the pre-trial investigation to the effect that O. V. Turchinov, the First Vice Prime Minister of Ukraine, reported that during the session it was necessary to adopt the Directives for further negotiations and conclusion of long-term contracts on the terms proposed by the Russian side. After discussion of that issue, when it became clear that the members of the Cabinet of Ministers of Ukraine would not come to an agreement on its approval, O. V. Turchinov withdrew the issue from the discussion.

By the testimony of witness V. S. Kuybida, who, from December 2007 to March 2010, served as Minister of Regional Development and Construction of Ukraine and testified that, on January 19, 2009, he participated in the extraordinary session of the Cabinet of Ministers of Ukraine. The session was chaired by O. V. Turchinov, the First Vice Prime Minister of Ukraine, who informed the members of the Cabinet of Ministers of Ukraine about the progress of the negotiations on the terms of gas supply to Ukraine and its transit being carried out by the Prime Minister of Ukraine Yu. V. Tymoshenko with the Russian

side. Subsequently, the ministers started discussing the Directives for the members of the delegation in the above negotiations. O. V. Turchinov, the First Deputy Prime Minister, stressed on the need for providing political support to the Prime Minister of Ukraine Yu. V. Tymoshenko in the negotiations. No decision based on the discussion of that issue was brought up for vote.

By the testimony of witness M. V. Onishchuk, who, from December 2007 to March 2010, served as Minister of Justice of Ukraine and testified before the Court that he attended the extraordinary session of the Government on January 19, 2009, which was chaired by O. V. Turchinov, the First Vice Prime Minister of Ukraine. The point of issue at this session of the Government was the draft Directives. The issue of approval of the Directives was withdrawn from the discussion by O. V. Turchinov, due to lack of consensus on this issue among the ministers.

By the testimony of witness V. V. Pavlyuk, who, from April 2006 to June 2010, served as Head of the Documentary Support Division of the Office of the Cabinet of Ministers of Ukraine and witness V. V. Zakharchyshyn, who served as Deputy Head of the Documentary Support Division of the Office of the Cabinet of Ministers of Ukraine, and informed the Court that the Great official seal "The Cabinet of Ministers of Ukraine" was in sole possession of the head of the Division, V. V. Pavlyuk, or V. V. Zakharchyshyn. Free access to the seal was excluded.

By the testimony of witness Ya. H. Dyakovytskyy, who since March 2008 has served as Deputy Head of Economic Planning and Budget Calculations Department of Naftogaz of Ukraine NJSC and testified that, in compliance with the Order of the Prime Minister of Ukraine M. Ya. Azarov and pursuant to Order No. 88, dated April 8, 2011, of the Main Supervision and Auditing Administration of Ukraine "On Conduct of the Commission Review of Certain Aspects of Financial and Business Activities of Public Joint Stock Partnership (PJSP) National Joint Stock Company Naftogaz of Ukraine for the period from January 1, 2008, to December 31, 2010," by a working group, of which he was a part, the commission review of certain aspects of financial and business activities of Naftogaz of Ukraine NJSC has been conducted. According to the calculations made together with the Ministry of Economy, in 2009, the additional purchase costs of imported gas increased from $179.5 per 1,000 cubic meters to $232.98 per 1,000 cubic meters. These calculations were made on the basis of monthly statements of purchase of the imported gas from Gazprom JSC. The volume of gas ranged to 26.8 billion cubic meters. In addition, in 2009, Naftogaz of Ukraine NJSC received 10 billion cubic meters of gas in the underground storage facilities as repayment of the RosUkrEnergo debt for the total amount of $1.7 billion. The witness fully confirmed his testimony given during the pre-trial investigation to the effect that it was established by the review that, as a result of conclusion of the natural gas purchase and sale contract and the transit contract between Gazprom JSC and Naftogaz of Ukraine NJSC on January 19, 2009, in violation of the terms of the Agreement Between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on Additional Measures to Procure Russian Natural Gas Transit via the Territory of Ukraine, dated October 4, 2001, which is an integral part of the Ukrainian legislation, the price of the imported natural gas has increased by $53.48 (by 29.8%) per 1,000 cubic meters.

Accordingly, the increased purchase costs of 3.639 billion cubic meters of imported natural gas for production and technological needs by the amount of $194.6 billion, or UAH 1 billion 516 million, resulted in the loss of assets and infliction of financial damages to Naftogaz of Ukraine NJSC for the respective amount. Based on the results of the review, on May 5, 2011, General Report of the Commission Review of Certain Aspects of Financial and Business Activities of PJSP National Joint Stock Company Naftogaz of Ukraine for the Period from January 1, 2008, to December 31, 2010 was prepared, whose findings fully confirmed the conclusions made in the Report (interim), dated April 11, 2011.

By the testimony of witness V. V. Vynokurov, who works as Director of Legal Department of Naftogaz of Ukraine NJSC and participated in conduct of the commission review of certain aspects of financial and business activities of Naftogaz of Ukraine NJSC for the period from January 1, 2008, to December 31, 2010. Based on the results of the review performed by the Main Supervision and Auditing Administration of Ukraine, as of April 11, 2011, Report (Interim) of the Commission Review of Certain Aspects of Financial and Business Activities of PJSP Naftogaz of Ukraine NJSC for the Period from January 1, 2008, to December 31, 2010, was prepared.

In addition to the analysis of the contracts and an overview of Naftogaz of Ukraine NJSC business activities, it was also stated and concluded that that the natural gas price in 2009 increased by to $53.08 per 1,000 cubic meters, i.e. by 29.8%, as compared to the 2008 price. That price increased from $179.5 per 1,000 cubic meters in 2008 to $232.98 per 1,000 cubic meters in 2009, while the payment rate for transit in 2009 remained unchanged and constituted $1.7 per 1 thousand cubic meters per 100 kilometers. It was concluded in the Report that, in 2009, with the rate for transit remaining unchanged, the purchase price of gas, whose volume ranged to 3 billion 539 million cubic meters, increased by 29.8%, which caused an increase in costs by $194.6 million. Later the Report was sent to Naftogaz of Ukraine NJSC, where it was evaluated for reservations. Upon evaluation of the Report, the working group of Naftogaz of Ukraine NJSC came up with no reservations. As established by the results of the review, the only holder and party to the contract was Naftogaz of Ukraine NJSC together with Gazprom JSC, with no other business entity involved, therefore, all expenses related to the purchase of this gas were incurred by Naftogaz of Ukraine NJSC. During the court proceedings, the witness stated that the commission review of certain aspects of financial and business activities of Naftogaz of Ukraine NJSC for the period from January 1, 2008, to December 31, 2010 was conducted in compliance with the "Procedure for Conducting Reviews by Working Groups of Central Executive Agencies" approved by Resolution of the Cabinet of Ministers of Ukraine No. 886, dated June 30, 2006.

By the testimony of witness O. A. Zhuk, who works as Deputy Head of the Department of Finance for Fuel and Production Sectors and Energy Efficiency of the Administration of Finance for the Production Industry of the Ministry of Finance of Ukraine and who informed the Court that he participated in conduct of the commission review of certain aspects of financial and business activities of Naftogaz of Ukraine NJSC for the period from January 1, 2008, to December 31, 2010. The review was conducted

in accordance with the issues included in the "Program – Working Plan for the Commission Review of Certain Aspects of Financial and Business Activities of Naftogaz of Ukraine NJSC for the period from January 1, 2008 to December 31, 2010" and upon the notification of Ye. M. Bakulin, Chairman of the Board of the Company. Based on the results of the review, on May 5, 2011, a General Report of the Commission Review of Certain Aspects of Financial and Business Activities of PJSP National Joint Stock Company Naftogaz of Ukraine for the Period from January 1, 2008, to December 31, 2010 was prepared. While conducting the review, the witness was entrusted with the scrutiny of issues included in Paragraph 5 "The consequences of the conclusion and implementation of contracts, dated January 19, 2009, for the state budget and (or) state-owned enterprises" of the Review Program. The review was conducted based on the materials provided by Naftogaz of Ukraine NJSC at the witness's request. According to the materials provided by Naftogaz of Ukraine NJSC, the average aggregate purchase price of imported gas in 2008 was $279.5; in 2009–2010, the imported gas was purchased under the contract, dated January 19, 2009. According to the materials, provided by Naftogaz of Ukraine NJSC, in 2009 the average price was $232.98 per 1,000 cubic meters and in 2010, that price was $256.69 per 1,000 cubic meters; thus, the average purchase price of natural gas in 2009, compared to 2008, increased by $53.48, or by UAH 416.67. In 2010, compared to 2008, the price increased by $77.19. The review has established that the conclusion of contract, dated January 19, 2009, resulted in increase of costs of natural gas for institutions and organizations financed from the state and local budgets, by UAH 941 million. In 2009, by UAH 357 million and in 2010, by UAH 584 million.

By the testimony of witness I. Yu. Klymovych, who works as Deputy Head of the Office of Pricing Methodology of the Department of Price Policy and Price Regulation of the Ministry of Economy of Ukraine and who informed the Court that he, as a representative of the Ministry of Economy of Ukraine, was sent to the Supervision and Auditing Administration to be a part of the working group for review of certain aspects of financial and business activities of Naftogaz of Ukraine NJSC. As a member of the working group he participated in the commission review of certain aspects of financial and business activities of Naftogaz of Ukraine NJSC for the period from January 1, 2008, to December 31, 2010. Based on the results of the review, on May 5, 2011, a General Report of the Commission Review of Certain Aspects of Financial and Business Activities of PJSP National Joint Stock Company Naftogaz of Ukraine for the Period from January 1, 2008, to December 31, 2010 was prepared. While conducting the review, the witness was entrusted with the scrutiny of the issues related to the comparison of the provisions of the contracts, dated January 19, 2009, to the economic conditions of natural gas supply and transit, existed before the contracts were concluded. Based on the review and as reflected in the report, the following results were obtained: the purchase price of natural gas in 2009, compared to 2008, increased by $53.48 per 1,000 cubic meters, or by 29.8 percent. In 2010, compared to 2008, the price increased by $77.19, or by 43 percent, the payment rate for transit in 2009, compared to 2008, remained unchanged and constituted $1.7 per 1,000 cubic meters per 100 kilometers. The price of gas for production and technological needs increased in 2009 by 29.8

percent, which led to the increase in the expenditure component of the transit operations by $194.6 million per 1,000 cubic meters. The review found that in 2009, as compared to 2008, Naftogaz of Ukraine NJSC incurred additional costs related to the purchase of industrial and service gas, which the working group members have legally qualified as a loss in the amount of $194.6 million.

By the testimony of witness K. V. Borodin, Deputy Director of the Department of Oil, Gas, Peat, Petroleum Industry and Alternative Fuels in the Ministry of Energy and Coal Industry, who testified that in March and April 2011, in compliance with the Order of the Prime Minister of Ukraine, he participated in the commission review of certain aspects of financial and business activities of Naftogaz of Ukraine NJSC for the period of 2008–2009. In the course of review, he personally analyzed the natural gas purchase contracts, concluded in 2008 and dated March 14 and March 6 and in 2009 No. KP and No. TGKU for gas transit, dated January 19. After reviewing these contracts, the commission came to the conclusion that, in 2009, after the contracts were signed, as compared to 2008, the gas price for Ukraine was raised by 29.8 percent or by $53.48 per one thousand cubic meters, having increased from $179.5 to $232.98 per one thousand cubic meters. The witness states that the 30 percent increase in price imposed additional costs on Naftogaz of Ukraine NJSC related to a broad range of activities, first of all, to purchase of so-called fuel gas, used by Naftogaz of Ukraine NJSC and its subsidiaries for transit of the same Russian gas to the Western Europe. The amount of the additional expenses in 2009 was $194.6 million. The general expenses of Naftogaz of Ukraine NJSC, due to the increase in price by 29.8 percent in 2009, constituted $1 billion 434.7 million, i.e. approximately UAH 12 billion. In 2010 and beyond, contract No. KP, dated January 19, 2011, has caused, causes and continues causing significant damages to Ukraine's economy in general and to Naftogaz of Ukraine NJSC, as a state-owned company, in particular.

By the testimony of witness A. V. Mykhalska announced in the court session, who testified that she was Deputy Director of Department and Head of the Office of Inspection of the State-owned Business Enterprises at the Main Supervision and Auditing Administration of Ukraine and, in compliance with Order No. 244, dated March 30, 2011, of the Prime Minister of Ukraine M. Ya. Azarov and Order No. 480-DSK, dated April 11, 2011, as well as pursuant to Order No. 88, dated April 8, 2011, of the Main Supervision and Auditing Administration of Ukraine "On Conduct of the Commission Review of Certain Aspects of Financial and Business Activities of PJSP National Joint Stock Company Naftogaz of Ukraine for the period from January 1, 2008, to December 31, 2010," she participated in conduct and drafting findings of the commission review of certain aspects of financial and business activities of Naftogaz of Ukraine NJSC for the period from January 1, 2008, to December 31, 2010. Based on the results of the review, on May 5, 2011, a General Report of the Commission Review of Certain Aspects of Financial and Business Activities of PJSP National Joint Stock Company Naftogaz of Ukraine for the Period from January 1, 2008, to December 31, 2010 was prepared.

It was established by the review that, as a result of conclusion of the gas supply contract between Gazprom JSC and Naftogaz of Ukraine NJSC No. KP, dated January 19, 2009, and contract for natural gas transit via the territory of Ukraine for the period of 2009–2019 No. TKHU, dated January 19, 2009, in violation of the terms of the Agreement Between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on Additional Measures to Procure Russian Natural Gas Transit via the Territory of Ukraine, dated October 4, 2001 (ratified by Law of Ukraine No. 2797-III, dated November 15, 2001), which is an integral part of the Ukrainian legislation, the price of the imported natural gas has increased by $53.48 (by 29.8%) per 1,000 cubic meters. Consequently, the purchase costs of 3.639 billion cubic meters of imported natural gas for production and technological needs were increased by the amount of $194.6 million, or UAH 1.515 million. It was also established that the formula for determining the gas price for Ukraine uses an unreasonably high base price (Po), which needs to be reduced, price of heating oil and petroleum gas oil, which have a marginal share in the energy balance of Ukraine, where the main alternative types of energy are coal and electric energy.

According to the review findings, the conclusion of contracts, dated January 19, 2009, resulted in increase of the natural gas price in 2009, as compared to 2008, by $53.48 per 1,000 cubic meters, or by 29.8% (from $179.5 per 1,000 cubic meters in 2008 to $232.98 per 1,000 cubic meters in 2009), and in 2010, as compared to 2008, by $77.19 per 1,000 cubic meters, or by 43% (from $179.5 per 1,000 cubic meters in 2008 to $256.69 per 1,000 cubic meters in 2009); the payment rate for transit in 2009 remained unchanged versus 2008 and was equal to $1.7 per 1,000 cubic meters per 100 kilometer distance; also, in 2009, with the unchanged rate for transit, the purchase price of the gas for production and technological needs (3.639 billion cubic meters) increased by 29.8%, which led to the increase in the expenditure component of the transit operations by $194.6 million. Therewith, considering the increased purchase costs of natural gas for the production and technological needs, the transit rate has to be equal $1.875 per one thousand cubic meters per 100 km distance versus $1.7 per one thousand cubic meters per 100 km distance, as established by the contract; the purchase costs of 26.8 billion cubic meters of natural gas for the needs of Ukrainian consumers in 2009 increased by $1,434.7 million versus 2008 and, in 2010, by $2,815.5 million due to the change from the fixed price of imported natural gas to the price determined by formula.

The testimony of witness A. V. Mykhalska, who directly participated in the investigation of financial and business activities of PJSP Naftogaz of Ukraine NJSC for the period from January 1, 2008, to December 31, 2010, confirmed the finding that the conclusion of Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019 No. TKHU, dated January 19, 2009, in violation of the terms of the Agreement Between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on Additional Measures to Procure Russian Natural Gas Transit via the Territory of Ukraine, dated October 4, 2001, which is an integral part of the Ukrainian legislation, caused in 2009, at the unchanged rate for transit ($1.7), an increase by 29.8% of the purchase price of the 3.639 billion cubic meters of natural gas for the production and technological needs. Consequently, the purchase costs of 3.639 billion cubic meters of imported natural gas for

production and technological needs increased by the amount of $194.6 million.

By the testimony of witness Yu. O. Sukhomlynov, who, from 2007 to 2010, held the position of Deputy Director of Department and Head of the Office of Hydrocarbon Resources Building, Gas Balances and Metrological Support for Production in the Oil and Gas Complex of the Department for Oil, Gas and Oil Refining Industry of the Ministry of Fuel and Energy of Ukraine and informed the Court, that he, together with Director of the Department, studied the issue of sufficiency of natural gas resources in the possession of Naftogaz of Ukraine NJSC for the period from January to March 2009, including domestic production and gas reserves and including the gas supplies under the foreign economic contract signed on January 19, 2009. Based on the materials provided by Naftogaz of Ukraine NJSC, the study found that natural gas consumption for the first quarter of 2009 was 19,432,000,000 cubic meters, which turned out to be one of the smallest numbers for the last 5 years. Natural gas production was the largest for the recent years and, in that quarter, amounted to 5,608,000,000 cubic meters. Natural gas imports in 2009 were 2,497,000,000 cubic meters. According to the data provided by UkrTransGaz Subsidiary Company (SK), during the period from January 1, 2009, to March 31, 2009, the Ukrainian consumers used 19,430,000,000 cubic meters of natural gas, of which 5,608,000,000 cubic meters of natural gas were produced by Naftogaz of Ukraine NJSC, 2,497,000,000 cubic meters of natural gas were imported by Naftogaz of Ukraine NJSC under the contract, dated January 19, 2009, and 11,439,000,000 cubic meters of natural gas were received to FSH, this gas being owned by RosUkrEnergo and was never recovered from FSH.

By the testimony of witness Ya. S. Marchuk, who, in January 2009, held the position of Director of UkrTransGaz, Subsidiary Company of Naftogaz of Ukraine NJSC and testified during the court proceedings, that, in the territory of Ukraine, there were 12 underground gas storage facilities with the total storage capacity of 32 billion cubic meters of active gas; as of January 1, 2009, roughly 24–25 billion cubic meters of gas were stored in the underground gas storage facilities, excluding buffer gas. Approximately 1.5 billion cubic meters of gas per month, or about 18–19 billion cubic meters of gas per year were produced by the natural gas fields of Ukraine. During the period when the gas transportation system operated in the reverse mode, no accidents were observed. Considering certain restrictions over the gas consumption, the available gas reserves would be sufficient for a period from three weeks to one month.

By the testimony of witness V. A. Yushchenko, the President of Ukraine (from January 24, 2005 to March 21, 2010), who testified during the court proceedings, that the entire process of building the gas relations in 2008–2009 was relied on the following two basic start points. On February 12, 2008, during his working visit to the Russian Federation and meeting with the Russian President, Vladimir Putin, a number of issues were considered, one of them being the relations between the Russian Federation and Ukraine in the gas sphere at the end of 2008 and the prospective of those relations for 2009. The essence of the decision they reached relied on four benchmarks, and this became a platform to further build their gas relations in 2008–2009. First, in the next three to five years, the Russian Federation and Ukraine will adopt the market relationship in terms of formation of the gas price, formation of the transit services and

formation of services for Russian gas storage in the underground storage facilities of Ukraine. By doing so, they assumed that the period of three to five years was sufficient for both parties, who, by using a synchronous and symmetrical mechanism for implementing market agreements, will be abandoning the political component in the formation of price for these three products and adopting a normal, civilized relationship where politics would not influence the concept of price, so that the issue of price would not emerge each year on December 31 and would not be political by nature, but rely on a specific economical context, as occurs in any European country. Second, the direct relations without any intermediaries had to be established. Therewith, any intermediaries between Ukraine and Russia have emerged only of Russia's own free will. Ukraine had a role of a led, not a leading person. Third, the issue of debt was raised. The debt at stake dragged from 2007, including penalties and fines for the delivered gas. Not all debts were mutually recognized, but 90 percent of the debts were confirmed on the corporate level. For that reason, the Russian side raised the issue, the one of the highest priority, of the debt repayment. The fourth point applied to the most current and important issue at that time, namely, to the price of gas in 2008. After the debate and negotiations, the Presidents came to a decision that a mutually acceptable position regarding the gas price for 2008 was $179.5, i.e. maintaining the existing price. Upon his return from Moscow, the witness signed the first directive for the Government, describing the agreement reached in a logical manner: Government had to manage 90 percent of the issues, while the Parliament—the remaining 10 percent. There was an agreement with the President of Russia that their negotiations would start immediately. By the mid-summer another Decree was issued, which was intended to encourage the Government to conduct those negotiations in a due manner on the Government and corporate levels. On October 2, 2008, a meeting between the Prime Ministers of Ukraine and Russia took place and, as a result, a Joint Memorandum was signed, which included several basic points that fully corresponded to the Presidents' arrangements reached earlier. Meanwhile, as of December 23–24, 2008, the requirement of the Russian side to repay the debt in the amount of $2.4 billion marked the start of a deep crisis in the relationship with the Russian side.

On December 28, 2008, upon the return of O. V. Dubyna from the negotiations, an urgent meeting took place, in which participated O. V. Shlapak, head of the economic complex for the President of Ukraine, B. I. Sokolovsky, permanent representative of the President of Ukraine for the external complex of energy issues, and Oleh Viktorovych Dubyna. O. V. Dubyna has informed that, in the course of the negotiations between representatives of Naftogaz of Ukraine NJSC and Gazprom JSC, the price of $250 per one thousand cubic meters of gas was discussed, as for the rate of transit, it was $1.7. Therewith, O. V. Dubyna believed that the Russian side took an unyielding position with regard to the rate for transit, but the gas price could be reduced to $235 per one thousand cubic meters. On December 28, 2008, a telephone conversation between the Prime Minister of Russia and the Prime Minister of Ukraine took place, during which the Russian side, for the first and the only time, made an official proposal for the Ukrainian side of the price of $250 per one thousand cubic meters of Russian gas, rate for transit of $1.7 and the prohibition of re-exportation of gas by Ukraine. The Prime Minister of Ukraine Yu. V. Tymoshenko declined the proposal of the Prime Minister of Russia.

Witness V. A. Yushchenko stated, that he knew from the Prime Minister of the Russian Federation V. V. Putin, that the latter offered to the Prime Minister of Ukraine Yu. V. Tymoshenko to come to Moscow and sign the contract for $250

for one thousand cubic meters with the right to re-export, but the Prime Minister of Ukraine Yu. V. Tymoshenko declined the offer.

On December 29, 2008, O. V. Dubyna reported that the Prime Minister of Ukraine Yu. V. Tymoshenko instructed him to arrange for her an urgent working visit to meet with the Prime Minister of Russia and the management of the Gazprom JSC. The Prime Minister of Russia said that he did not want to meet the Prime Minister of Ukraine. O. V. Dubyna asked the President of Ukraine to communicate to the Prime Minister of Ukraine Yu. V. Tymoshenko, in a form of a "gentle" message that she was not welcome in Russia.

On December 31, 2008, O. V. Dubyna returned from Moscow due to the *de facto* termination of the negotiation process.

On the night of January 1, 2009, a joint statement of the President of Ukraine and the Prime Minister of Ukraine was released. The purpose of the statement was, first, to explain why the negotiations were stalled and, second, to reassure the world that Ukraine in these agreements acted in a fair and consistent manner and that in any way the transit guarantees would be influenced.

On January 4, 2009, the Russian side began to reduce supplies of gas for transit and, starting the night from January 6–7, the gas supplies to Europe were shut off.

The Ukrainian side was acting in accordance with the plan of foreign policy activities and, as of January 17, 2009, the Ukrainian side reached understanding with the European partners on every level.

Witness V. A. Yushchenko stated that after a telephone conversation with Lech Kaczynski, due to an existing prospect to conduct normal European negotiations, regarding the hosting of a European trilateral conference and taking into account that Ukraine had sufficient gas reserves until March–May 2009, he asked the Prime Minister of Ukraine Yu. V. Tymoshenko not to attend the International Conference on gas issues in Moscow, and she agreed.

In the meantime, the Prime Minister of Ukraine Yu. V. Tymoshenko departed for Moscow and held negotiations with the Prime Minister of the Russian Federation.

On January 18, 2009, upon the return of Yu. V. Tymoshenko from Moscow, her meeting with the witness took place, during which Yu. V. Tymoshenko failed to inform the President of Ukraine about the agreements, which had been reached, and did not provide him with the draft contract.

After the contracts were signed on January 19, 2009, and Yu. V. Tymoshenko returned from Moscow, the President of Ukraine requested the copies of the concluded contracts, but was refused on the grounds that the contract was a secret material.

Witness V. A. Yushchenko believes that the Natural Gas Purchase and Sale Contract for 2009–2019 concluded as a result of the negotiations held by Yu. V. Tymoshenko is currently the most destabilizing factor.

As of January 2009, Ukraine had sufficient gas reserves to safely work and continue negotiations with Russia.

Elaborating over the motives of Yu. V. Tymoshenko to conduct her negotiations in Moscow, which resulted in conclusion of the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019, witness V. A. Yushchenko stated that Yu. V. Tymoshenko acted with a motive to sign the agreement as the Prime Minister of Ukraine on the eve of the presidential elections. An illusion of the victory of social and national interests is created in the society, but this hides a political

byplay. Russia requires a pro-Russian servile leader, whatever is the price—it does not matter. Therefore, through a number of steps, which brought Ukraine to the January 19, 2009, the national interests have been substituted by political expediency.

By the testimony of witness O. V. Shlapak, who, in January 2009, held the position of First Deputy Head of the Secretariat of the President of Ukraine and testified in the court proceedings that in February 2009 the President of Ukraine and the President of the Russian Federation D. A. Medvedev had directly discussed the issue of transitioning to direct relations, concerning both the gas supply in Ukraine and its transit, and arrived to the conclusion that it is necessary to adopt direct relations, which interconnect the mutual responsibilities of the parties both with regard to the gas supply to Ukraine and its transit. Subsequently, a Memorandum was signed by the Prime Minister of Ukraine Yu. V. Tymoshenko and the Prime Minister of the Russian Federation V. V. Putin, which defined the principles of further cooperation. This was a significant step forward in relations between the Ukrainian and Russian sides. However, reality turned out to be much more complex and during the continued negotiations we received a proposal from the Russian side of a gas price of $250 and the rate for transit of $1.7. Ukraine definitely could not agree with this. As of January 1, 2009, no contracts were signed. On the night of January 1, 2009, a joint statement of the President of Ukraine and the Prime Minister of Ukraine was released, where they explained their position and the reasons why they oppose the above proposal of the Russian side, because they assumed that the gas price should be $200 and the price of transit $2.0. Since the contracts were not signed, the Russian Federation reduced gas supplies to Ukraine by the volumes that were designed for Ukraine and, starting January 5 or 6, 2009, gas supplies to Ukraine were shut off completely, making the gas transit via the territory of Ukraine impossible.

In mid-January 2009, O. V. Dubyna, head of Naftogaz of Ukraine NJSC, departed for Moscow to continue the negotiations with the Russian Federation. During the negotiations, the Russian side offers the price of $400–420 per one thousand cubic meters, and he did not assume responsibility for signing any contracts. On January 17, 2009, the Prime Minister of Ukraine Yu. V. Tymoshenko departs for negotiations with the Prime Minister of Russian Federation V. V. Putin. On Monday, January 19, 2009, at 9:00 a.m., a meeting with the President of Ukraine took place, where the Prime Minister of Ukraine Yu. V. Tymoshenko informed of the arrangements that she had reached with the Prime Minister of the Russian Federation. Witness O. V. Shlapak stated that during this meeting, he, being somewhat familiar with the details of the draft contracts, started asking questions why the initial gas price was $450 and the transit price remained at $1.7 and why the contracts were asymmetrical? The Prime Minister of Ukraine Yu. V. Tymoshenko promised to provide the copies of draft contracts so that the President of Ukraine could review them, but she did not give any specific information regarding the essence of their main provisions. The President of Ukraine V. A. Yushchenko did not endorse the conclusion of the contracts, dated January 19, 2009. The opinion of the President of Ukraine was that a break should be taken, because the situation was very complicated, however, both they and experts of Naftogaz of Ukraine NJSC were convinced that Ukraine still had time to continue the negotiations, therefore, V. A. Yushchenko insisted on

the continuation of the negotiations. The fact of conclusion of the contracts became known only from the media. In the witness's opinion, the contracts contradict the Memorandum signed with the Russian side and are economically disadvantageous for Ukraine.

By the testimony of witness V. M. Pynzenyk announced in the court session, who testified that, until February 2009, he served as Minister of Finance of Ukraine and was responsible for preparation and implementation of the State Budget of Ukraine within the limits established by the Regulations on the Ministry of Finance of Ukraine. At the time of his appointment as Minister, the gas supply to Ukraine was carried out in accordance with the agreements made between Naftogaz of Ukraine NJSC and RosUkrEnergo. He recalls that, in January 2009, Gazprom JSC started imposing restrictions on the supply of natural gas to Ukraine and subsequently stopped the gas transit via the territory of Ukraine. On January 19, 2009, an extraordinary session of the Cabinet of Ministers of Ukraine was convened. The session of the Government was chaired by O. V. Turchinov, because the Prime Minister of Ukraine Yu. V. Tymoshenko was on a business trip to Moscow as head of the Ukrainian delegation at the negotiations with the Russian side on the gas agreements. O. V. Turchinov announced that the reason for the urgency of the session of the Government was to discuss the draft Directives for signing the contracts for natural gas supply to Ukraine and gas transit. O. V. Turchinov reported that the Ukrainian and Russian sides were negotiating, at the time, the supplies of natural gas to Ukraine, and one of the condition of the Russian side was the proposed price, which Ukraine would have to pay for the gas delivery, namely, this price had to be $450 per 1,000 cubic meters of gas. At the same time, the price of natural gas transit through the territory of Ukraine in 2009 remained unchanged, i.e. the same as in 2008. O. V. Turchinov also reported that, at the session, the Directives need to be approved for further negotiations and for conclusion of long-term contracts on the terms proposed by the Russian side. O. V. Turchinov reported for those present at the session the situation existing at the negotiations. After the O. V. Turchinov's report, discussion of the draft Directives took place. Many members of the Government asked questions on different matters. However, they did not receive complete responses on their questions concerning the document. Therefore, in the witness's opinion, if the issue of approval of this decision were brought up for vote, it would not be approved. After prolonged deliberations, O. V. Turchinov withdrew the issue from the discussion and did not bring it for vote.

By the testimony of witness M. Ya. Azarov, the Prime Minister of Ukraine, who testified during the court proceedings, that after his appointment to the position, he personally reviewed all the documents that dealt with mutual financial and business relationship between Naftogaz of Ukraine NJSC and Gazprom JSC on gas supply and transit for 2009–2019. He believes that the contracts signed on January 19, 2009, are absolutely disadvantageous for Ukraine and, moreover, they are bringing the country into bankruptcy. The legal norms set forth by the Russian side in the agreements provide for severe sanctions for unilateral termination of the agreement as well as for the gas under drawing in summer—150%, in winter—300%. For this reason, now it is very difficult to raise the question of cancellation of the contracts signed in 2009.

Under the terms of the Natural Gas Purchase and Sale Contract, date January 19, 2009, the price of Russian gas delivered to Ukraine is set on a quarterly basis using a special formula that determines a price trajectory for a year. The pricing formula, included in the contracts between Naftogaz of Ukraine NJSC and Gazprom JSC, signed on January 19, 2009, does not correspond to the pricing concept used in the long-term contractual relations between Gazprom JSC and its European counterparts, namely: – instead of the calculation of base price using a formula, the base price is already included and as such a price a fixed value of $450 per 1,000 cubic meters is used, not an estimated gas price as of a certain date of the previous period; – petroleum gas oil, which is not used on the Ukrainian market, is referred to as one of the alternative energy sources. It would be more correct to use in the calculations power generating coal, along with heating oil; – no coefficient is provided to adapt the price formula to changing conditions. Moreover, the calculations that would justify the base price of $450 per 1,000 cubic meters are not included. In fact, this price reflects the worst terms of long-term contracts between Gazprom JSC and companies of some European countries (for example, Poland) at that time. Also, neither the lower transportation costs, nor the fact that Ukraine is the largest buyer of Russian natural gas and, in accordance with generally accepted market approaches, shall reasonably expect a permanent discount on the gas price (incorporation of a discount coefficient into the formula), were taken into consideration. In the practice of the long-term contracts concluded between Gazprom JSC and its European counterparts for each country, specific formulae for calculations are used, which contain parameters, first of all, a method to determine the base gas price, and coefficients in the above formulae individually agreed on a bilateral basis with the Russian side. Today, the Russian side publicly denies any possibility of revision of the principles of formation of the gas price and declares that the existing contracts should be performed in their entirety. As for the gas price for Ukraine in 2009, the witness stated that this price was discounted by 20%, while in the first quarter of 2010 it increased to $304 per 1 thousand cubic meters. According to the gas contracts signed in 2009 by the Government headed by Yu. V. Tymoshenko, the gas price for Ukraine in the 4th quarter of 2011 would be equal approximately $488 per one thousand cubic meters (excluding the ratified “Kharkiv Agreements”). Witness M. Ya. Azarov also testified that the contracts signed in 2009 will determine the policy of Ukraine for the next 10 years, and that the conclusion of such gas agreements was total surrender of the national interests of Ukraine. In his opinion, when conducting the negotiations in Moscow and achieving the 20% discount for 2009, the Prime Minister of Ukraine Yu. V. Tymoshenko was guided by her personal motives aimed to win the presidential elections in 2009 at any cost.

By the testimony of witness Yu. A. Boyko, Ministry of Energy and Coal Industry of Ukraine, who in 2002–2005, served as head of Naftogaz of Ukraine NJSC, in 2006–2007, held the position of Minister of Energy of Ukraine and stated in the court proceedings, that after his appointment to the position, he thoroughly reviewed the documents that dealt with financial and

business relationship between Naftogaz of Ukraine NJSC and Gazprom JSC on gas supply and transit for 2009–2019. The documents show that the concluded contracts were expressly disadvantageous for Ukraine. In his opinion, signing the contracts on January 19, 2009, was associated with existence of debt of UESU Corporation, once headed by Yu. V. Tymoshenko, in the amount of $403 million.

By the testimony of witness T. V. Kornyakova, who, in 2009–2010, held the position of Deputy Prosecutor General of Ukraine and testified before the court that, on April 28, 2010, the Prosecutor General's Office of Ukraine received an inquiry of deputy from People's Deputy [Member of the Ukrainian Parliament] Oliynyk. Upon the inquiry of deputy was received by the Prosecutor General's Office, the Prosecutor General Medvedko, taking into account that the inquiry concerns her area of supervisory responsibility, ordered her to manage the review. On the same day, she assigned the above inquiry to the Head of Main Administration for Surveillance on Compliance with Laws on Citizens' Rights and Freedoms, Dombrovskyy, and his First Deputy, Zakoretskyy. The questions raised by the inquiry, namely, the legality of approval by the former Prime Minister of Ukraine Yu. V. Tymoshenko of the Directives for Naftogaz of Ukraine NJSC, which were used for the conclusion of gas contracts on January 19, 2009, between Naftogaz of Ukraine NJSC and the Gazprom JSC, were also raised by various authorities and senior government officials, in particular by the President of Ukraine. Pursuant to the Order of the Main Supervision and Auditing Administration of Ukraine and on the instructions of the President of Ukraine V. A. Yushchenko, the Prosecutor General's Office of Ukraine, in 2009, conducted review of this issue.

On May 25, 2010, upon request from the Prosecutor General's Office, the Scientific and Legal Expert Opinion on the compliance of gas contracts, dated January 19, 2009, with the legislation of Ukraine, prepared by the V. M. Koretsky Memorial Institute of State and Law and signed by Deputy Director of that Institute, Nagrebelnyy, was received. The Prosecutor General's Office of Ukraine also received a letter from the Ministry of Justice of Ukraine, dated May 12, 2009, which contained the opinion of the Ministry of Justice of Ukraine to the effect that the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019, approved by Yulia Volodymyrivna Tymoshenko on January 19, 2009, cannot be considered as directives of the Government of Ukraine, whose approval is regulated by the laws of Ukraine.

On May 27, 2010, the witness, as required by the law, gave an interim reply to the People's Deputy of Ukraine Oliynyk to the effect that, in response of his inquiry, a review is being conducted on possible adverse consequences of the conclusion and performance of the said contracts and, also, indicated that he would be additionally informed about the final results of the review. In June 2010, the witness instructed the Supervision and Auditing Administration to conduct a review of certain aspects of financial and business activities of Naftogaz of Ukraine NJSC and, also, sent a letter to Lavrynovych, Minister of Justice of Ukraine, requesting to restate the opinion of the Ministry of Justice of Ukraine regarding the compliance of gas contracts, dated January 19, 2009, and the above Directives for Naftogaz of Ukraine NJSC, approved on January 19,

2009, with the legislation of Ukraine. In addition, a request was sent to the Cabinet of Ministers of Ukraine to provide the necessary information and documents concerning those issues. On July 5, 2010, the witness voluntarily resigned from her office. By the time of her resignation, the review was not completed. The final reply based on the results of the review was not provided.

By the testimony of witness V. V. Kudryavtsev, who, from January 2000 to November 2010, held the position of Deputy Prosecutor General of Ukraine and testified before the court that, in May–June 2010, due to absence of T. V. Kornyakova, Deputy Prosecutor General of Ukraine, who was in charge of the matters related to protection of the citizens' rights and freedoms, interests of the state, he performed her duties. The witness stated that the reply bearing his signature, which was sent to the inquiry of the People's Deputy of Ukraine Oliynyk, was not final, because the reply referred to the circumstances of the verification activities of the Prosecutor General's Office of Ukraine and to making another decision as required by the law.

By the testimony of witness I. I. Bondarenko, who, from April 2005 to November 2010, held the position of Senior Prosecutor at the Department of Protection of the Financial and Economic Interests of the State within the Main Administration for Surveillance on Compliance with Laws on Citizens' Rights and Freedoms and on Protection of the Interests of the State of the Prosecutor General's Office of Ukraine, who testified before the court that, in 2009–2010, he was involved in the review of the legality of conclusion of the agreements for natural gas supply to Ukraine and for transit of Russian gas via the territory of Ukraine. In late April 2010, the Prosecutor General's Office of Ukraine received an inquiry from People's Deputy Oliynyk regarding the legality of the Directives signed by Yu. V. Tymoshenko. Later, the similar inquiries were received from the Administration of the President and from the Cabinet of Ministers of Ukraine. The Main Administration for Surveillance on Compliance with Laws on Citizens' Rights and Freedoms and on Protection of the Interests of the State of the Prosecutor General's Office of Ukraine was entrusted with management of the review of the inquiries.

The witness stated that he was directly involved in the review. He prepared requests to the Ministry of Justice of Ukraine, to the V. M. Koretsky Memorial Institute of State and Law and drafted an interim reply to the People's Deputy Oliynyk, because, at the time, it was not possible to make a decision.

Witness V. P. Nagrebelnyy, Deputy Director of the V. M. Koretsky Memorial Institute of State and Law, interrogated by the court, testified in the court proceedings that, in 2009–2010, the V. M. Koretsky Memorial Institute of State and Law of the National Academy of Sciences of Ukraine received letters from the Prosecutor General's Office of Ukraine with requests to provide opinion of the Institute on the compliance with the legislation of Ukraine and the norms of the international law of the Directives for the delegation in negotiations with Gazprom JSC, approved by the Prime Minister of Ukraine on January 19, 2009, and the contracts for natural gas purchase and sale and its transit via the territory of Ukraine for the period of 2009–2019. The witness stated his opinion, which is incorporated into the materials of this criminal case, and testified that the opinion given was his personal opinion as an expert, and the said documents cannot be considered as expert report within the meaning of the Law of Ukraine "On Forensic Examination."

In addition, the guilt of Yu. V. Tymoshenko in committing the crime is confirmed by the following evidence:

By the document titled: "The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019," approved on January 19, 2009 by the Prime Minister of Ukraine Yu. V. Tymoshenko (case sheets 159–160, Vol. 4) that were seized according to the seizure protocol, dated February 9, 2011, during the seizure on the premises of Naftogaz of Ukraine NJSC, carried out pursuant to the investigator's order for the seizure, dated February 7, 2011 (case sheets 116, 117–119, Vol. 4), which contains information that Yu. V. Tymoshenko, in violation of the requirements of Art. 19 of the Constitution of Ukraine, by approving these Directives and affixing the seal of the Cabinet of Ministers of Ukraine thereon, obligated the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019, in concluding the Natural Gas Purchase and Sale Contract for 2009–2019 for consumers in Ukraine, to follow the terms of natural gas purchase under a direct contract signed with Gazprom JSC, using a price formula, which shall account for basic oil product components used in the European countries (heating oil, petroleum gas oil), providing, in 2009, for 20% discount from the natural gas base price level, which was determined based on the result of agreements reached between the Prime Ministers of Ukraine and the Russian Federation on January 17, 2009, in the amount of $450 per 1,000 cubic meters; in the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019, to provide for the payment rate for transit in 2009 equal $1.7 per 1,000 cubic meters per 100 km distance, as well as calculation of the payment rate for transit in 2010 based on a formula, which will compensate Naftogaz of Ukraine NJSC for all operating expenses associated with the transit of natural gas, full cost of fuel gas, depreciation value of the gas transportation system used for the transit, based on the fair market value of the gas transportation system, as well as the cost of capital calculated using the Naftogaz of Ukraine NJSC cost of capital effective rate and the fair market value of the gas transportation system used for the transit. This formula must account for indexation of all the above components in accordance with actual market conditions; before ___ _______ 2009, to acquire from OAO Gazprom the right of claim for at least 10,345 billion cubic meters of natural gas with total value of $1.6 billion owned by RosUkrEnergo AG and stored in the underground gas storage facilities of Ukraine. The payment shall be made out of the funds obtained as an advanced payment for services to be performed in 2009 under the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019.

By the Protocol of Document Inspection, dated April 18, 2011 (case sheets 161–162, Vol. 4), which confirms that, by inspection of the document titled: "The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for

the Period of 2009–2019," it is established that the document is drafted on two paper sheets of A4 format. The text of the document is made by a printing device with black ink. In the upper right corner of the first sheet, there is an approval label, which consists of the printed text: "Approved, Prime Minister Yu. V. TYMOSHENKO," the handwritten signature on behalf of Yu. V. Tymoshenko and the date "January 19, 2009," in which the day and the month name are handwritten. The signature is made with black ink and the handwritten part of the date with blue-violet ink. The signature on behalf of Yu. V. Tymoshenko is certified by blue impression of the coat-of-arms seal "CABINET OF MINISTERS OF UKRAINE." Below the name and the text of the document are located. The second paragraph on the second sheet of the document contains a blank date ("…. before "___" ________ 2009, to acquire...."). In the bottom part of the second sheet, there is a handwritten signature, made with blue-violet ink.

The defense team, both during the case hearing by the Court and at the court debates, addressed the Court with a petition and a motion to declare the above Document and Protocol as inadmissible evidence in the case referring to the testimony of witness M. O. Livinskyy and to the fact that the decision to enter the documents, dated April 18, 2011, in the criminal case shows April 17, 2011 as the date of inspection of the documents.

Taking into account that the materials in the case investigated by the Court confirm that the document "The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019" was obtained and entered by the proper person and in the way provided for by the Code of Criminal Procedure of Ukraine, the Court comes to the conclusion that the arguments of the defense team on inadmissibility of this evidence are groundless.

By Expert Report No. 3616/11-11/3617/11-13, dated April 20, 2011, based on the results of a comprehensive technical and criminalistics expert examination with photo tables (case sheets 226–240, Vol. 4), which confirms that:

– the signature on behalf of Yu. V. Tymoshenko within the label "Approved, Prime Minister Yu. V. Tymoshenko" in the document "The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019," dated January 19, 2009, is made by Yulia Volodymyrivna Tymoshenko herself;

– the signature on behalf of Yu. V. Prodan under the text of second page in the document "The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019," dated January 19, 2009, is made by Yuriy Vasyliovych Prodan himself;

– in the document "The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of

Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019," dated January 19, 2009, the signature on behalf of Yu. V. Tymoshenko is made with water soluble ink; the date inscription, "January 19," is made by ball-point pen ink; the impression of the coat-of-arms seal with the text "CABINET OF MINISTERS OF UKRAINE" is affixed by stamp ink with a seal, whose relief block is manufactured from a set of characters of standard fonts; the impression of the coat-of-arms seal with the text "CABINET OF MINISTERS OF UKRAINE" is affixed by the seal of the Cabinet of Ministers of Ukraine, control sample impressions of which are provided for a comparative study; first the printed text, then the signature made on behalf of Yu. V. Tymoshenko, over the text and the signature, the impression of the coat-of-arms seal with the text "CABINET OF MINISTERS OF UKRAINE" affixed; the signature on behalf of Yu. V. Prodan on the second page is made with ball-point pen gel ink.

The defense team, both during the case hearing by the Court and at the court debates, addressed the Court with a petition and a motion to declare the above Expert Report as inadmissible evidence in the case referring to the testimony of witness M. O. Livinskyy and to the fact that based on the decision to order the technical and criminalistics expert examination of the document, dated April 19, 2011, the prosecutor, upon reviewing the materials of criminal case No. 49-3151, ordered an expert examination in the other criminal case, No. 49-3063.

In addition, the defense team referred to the fact that the expert examination was ordered on April 19, 2011, and was already concluded on April 20, 2011, as well as considers the Expert Report premature and insufficiently grounded.

In the meantime, the decision to order the technical and criminalistics expert examination of the document, dated April 19, 2011 (case sheets 220–222, Vol. 4), contains evidence that the prosecutor, in ordering the expert examination in the case, has reviewed the materials of criminal case No. 49-3151 and ordered the expert examination exactly in case No. 49-3151, therefore, the Court comes to the conclusion that the defense attorney's allegations about the discrepancy of the case number in the decision to conduct the expert examination is a knowingly misleading reference to the facts of the case.

The decision to order the technical and criminalistics expert examination of the document, dated April 19, 2011, and Expert Report No 3616/11-11/3617/11-13, dated April 20, 2011, along with other case material reviewed by the Court, directly confirm that the above expert examination was ordered in compliance with the requirements of the Code of Criminal Procedure of Ukraine and contains clear, peremptory conclusions on the questions asked and, therefore, the Court considers Expert Report No 3616/11-11/3617/11-13, dated April 20, 2011, as admissible evidence in the case, not requiring any additional investigation.

By the document titled: "Natural Gas Purchase and Sale Contract for 2009–2019 No. KP, dated January 19, 2009" (case sheets 41–58, Vol. 2, certified copy), which contains evidence of the natural gas price based on a formula accounting for costs of heating oil and petroleum gas oil and using the base price (Po) equal $450 per 1,000 cubic meters, which corresponds to the provisions reflected in the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of

Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019, approved by the Prime Minister of Ukraine Yu. V. Tymoshenko, acting alone, on January 19, 2009.

By the document titled: “Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019 No. TKHU, dated January 19, 2009” (case sheets 73–92, Vol. 2, certified copy), which contains evidence that the Contract provides for preservation of the payment rate for transit in 2009 in the amount of $1.7 per 1,000 cubic meters per 100 kilometers, which corresponds to the provisions reflected in the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019, approved by the Prime Minister of Ukraine Yu. V. Tymoshenko, acting alone, on January 19, 2009.

By the document titled: “Transcript of the session of the Cabinet of Ministers of Ukraine” dated January 19, 2009, chaired by the First Vice Prime Minister of Ukraine O. V. Turchinov (case sheets 114–137, Vol. 6), which contains evidence that the second item on the agenda at the session of the Cabinet of Ministers of Ukraine on January 19, 2009, was the issue of foreign economic activities of Naftogaz of Ukraine NJSC. During the session of the Government, O. V. Turchinov stressed on the need to support the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019.

The defense team, both during the case hearing by the Court and at the court debates, addressed the Court with a petition and a motion to declare the document: “Transcript of the session of the Cabinet of Ministers of Ukraine,” dated January 19, 2009, as inadmissible evidence in the case, referring to the fact that this document was seized pursuant to order for the seizure, dated April 14, 2011, issued by O. A. Nechvoglod, senior investigator for particularly important cases of the Prosecutor General’s Office of Ukraine, and, in the opinion of the defense, is illegal, because fails to provide proofs in support the seizure of all the documents listed therein.

The Court, having reviewed the order for the seizure, dated April 14, 2011, and the document: “Transcript of the session of the Cabinet of Ministers of Ukraine,” dated January 19, 2009, comes to the conclusion that the arguments of the defense team on the illegality of the above decision and inadmissibility of the said document as a valid evidence in the case are artificial and not grounded on the factual circumstances of the case.

In particular, order for the seizure issued by the senior investigator for particularly important cases of the Prosecutor General’s Office of Ukraine, dated April 14, 2011 (case sheets 108–109, Vol. 6), fully conforms with the requirements of the Code of Criminal Procedure of Ukraine, Sections 130, 178, because it lists the place and time of its preparation, the position of the official issuing the order, his/her name, the case under investigation, and grounds for the order, as well as the Section of the Code of Criminal Procedure of Ukraine, pursuant to which the senior investigator for particularly important cases of the Prosecutor General’s Office of Ukraine issued the order.

By the document titled: “Transcript of the session of the Cabinet of Ministers of Ukraine,” dated January 21, 2009 (case sheets 138–220, Vol. 6), seized according to the seizure protocol, dated April 21, 2011 (case sheets 110–111, Vol. 6), which contains evidence that the session of the Cabinet of Ministers of Ukraine on January 21, 2009, was chaired by the Prime Minister of Ukraine Yu. V. Tymoshenko, who reported the results of the working visit to the Prime Minister of the Russian Federation on January 17–20, 2009, without providing the members of the Government with the Contracts themselves and the calculations.

The defense team arguments for declaration of the document: “Transcript of the session of the Cabinet of Ministers of Ukraine,” dated January 21, 2009, as inadmissible are similar to the arguments contained in the motions for declaration of the document: “Transcript of the session of the Cabinet of Ministers of Ukraine,” dated January 19, 2009, as inadmissible evidence and are reasoned by referring to the illegality of the investigator’s order for the seizure, dated April 14, 2011, which was fully rebutted during the court hearing.

By the document titled: “Agenda of the session of the Cabinet of Ministers of Ukraine,” dated January 19, 2009, seized according to the seizure protocol, dated April 29, 2011 (case sheets 61–62, Vol. 8), which contains evidence to the effect that it was planned at the session of the Cabinet of Ministers of Ukraine on January 19, 2009, to approve the Order of the Cabinet of Ministers of Ukraine regarding Naftogaz of Ukraine NJSC foreign economic activities (case sheet 64, Vol. 8).

By the document titled: “Order of the Cabinet of Ministers of Ukraine regarding Naftogaz of Ukraine NJSC foreign economic activities,” seized according to the seizure protocol, dated April 29, 2011 (case sheets 61–62, Vol. 8), which contains evidence to the effect that it was planned at the session of the Cabinet of Ministers of Ukraine on January 19, 2009, to approve by the Order of the Cabinet of Ministers of Ukraine regarding Naftogaz of Ukraine NJSC foreign economic activities the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019 (case sheet 67, Vol. 8).

By the Protocol of Inspection, dated April 28, 2011, of the transcripts of the Government sessions, dated January 19 and 21, 2009, Protocols No. 3–No. 4 of the sessions of the Cabinet of Ministers of Ukraine on January 19 and 21, 2009, and other documents that were seized during the seizure on April 21, 2011, from the Department of Record Management, Control and Requests Handling of the Secretariat of the Cabinet of Ministers of Ukraine (case sheets 251–256, Vol. 6), which contains a detailed description of the seized documents.

The Court considers groundless and contradicting the factual circumstances of the case the defense team arguments on the invalidity of the above evidence, which are reasoned by referring to the fact that during the inspection on April 28, 2011, only certified copies of the Transcripts of the sessions of the Cabinet of Ministers of Ukraine, dated January 19 and 21, 2011, and a certified copy of the Agenda of the session of the Cabinet of Ministers of Ukraine, dated January 21, 2009, could be inspected, but not the original documents, because the inspected documents are included in the

case material, and their investigation by the Court fully confirms the correctness of the data included into the Protocol of Inspection, dated April 28, 2011.

By the Protocol of Inspection, dated April 31, 2011, of the documents prepared for the session of the Cabinet of Ministers of Ukraine on January 19, 2009, that were seized during the seizure on April 29, 2011, from the Department of Record Management, Control and Requests Handling of the Secretariat of the Cabinet of Ministers of Ukraine (case sheets 75–78, Vol. 8), which contains information that the seized documents were placed in a cover made of heavy paper with the inscriptions “Cabinet of Ministers of Ukraine, Minutes No. 3, Session of the Cabinet of Ministers of Ukraine, dated January 19, 2009” thereon and stitched. The Protocol contains information that the document “Agenda of the session of the CMU dated 1/19/09,” printed on a white paper sheet of A4 format. By inspection of this document it is established that the second item on the agenda of the Cabinet of Ministers of Ukraine session on January 19, 2009, was listed as follows: “regarding Naftogaz of Ukraine NJSC foreign economic activities (draft Order of the Cabinet of Ministers of Ukraine). Speaker Oleksandr Valentynovych Turchinov—First Vice Prime Minister.” The Protocol contains information that the draft Order of the Cabinet of Ministers of Ukraine “Regarding Naftogaz of Ukraine NJSC foreign economic activities” is printed on a paper sheet of A4 format. In the upper right corner thereof, a handwritten text “item 2” is added and the following text is printed: “official use only Copy No. 1.” The contents of the operative part of this document is as follows: “The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019 (added to the original) are hereby approved.” The final part of the draft document contains text: “Prime Minister of Ukraine Yu. Tymoshenko.” The signature is absent.

The defense team, both during the case hearing by the Court and at the court debates, addressed the Court with a petition and a motion to declare the Protocol of Inspection, dated April 31, 2011, of the documents prepared for the session of the Cabinet of Ministers of Ukraine on January 19, 2009, that were seized during the seizure on April 29, 2011, from the Department of Record Management, Control and Requests Handling of the Secretariat of the Cabinet of Ministers of Ukraine as inadmissible evidence in the case on the only grounds that the Protocol was dated April 31, 2011, i.e. by a non-existent date. On these grounds the defense team requests to declare as inadmissible evidence the Agenda of the session of the Cabinet of Ministers of Ukraine, dated January 19, 2009, and the document: draft Order of the Cabinet of Ministers of Ukraine “Regarding Naftogaz of Ukraine NJSC foreign economic activities.”

The Court, having reviewed the above Protocol of Inspection of the documents prepared for the session of the Cabinet of Ministers of Ukraine on January 19, 2009, which was dated April 31, 2011, along with other case material, comes to the conclusion that an erroneous date of April 31, 2011, shown on the Protocol is an obvious clerical typo and cannot justify inadmissibility of the factual data contained in the minutes and the documents into evidence of the case.

By the document titled: “Report (Interim) of the Commission Review of Certain

Aspects of Financial and Business Activities of PJSP National Joint Stock Company Naftogaz of Ukraine for the Period from January 1, 2008, to December 31, 2010," which contains evidence that conclusion of the gas supply contract between Gazprom JSC and Naftogaz of Ukraine NJSC No. KP, dated January 19, 2009, and Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the period of 2009–2019 No. TKHU, dated January 19, 2009, in violation of the terms of the Agreement Between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on Additional Measures to Procure Russian Natural Gas Transit via the Territory of Ukraine, dated October 4, 2001 (ratified by Law of Ukraine No. 2707-III, dated November 15, 2001), which is an integral part of the Ukrainian legislation, has increased the price of the imported natural gas by $53.48 (by 29.8%) per 1,000 cubic meters. Consequently, the purchase costs of 3.639 billion cubic meters of imported natural gas for production and technological needs were increased by the amount of $194.6 million, or UAH 1.515 million, resulted in the loss of assets and infliction of financial damages to Naftogaz of Ukraine NJSC for the respective amount (case sheets 191–198, Vol. 1).

The defense team, both during the case hearing by the Court and at the court debates, addressed the Court with a petition and a motion to declare the Report (Interim) of the Commission Review of Certain Aspects of Financial and Business Activities of PJSP National Joint Stock Company Naftogaz of Ukraine for the Period from January 1, 2008, to December 31, 2010, as inadmissible evidence in the case, referring to the fact that the review was conducted or executed by individuals, whose identities were not known to the investigation; the results of the review are not presented as prescribed by law; the findings of the review do not correspond to the facts and are deliberately construed in favor of the prosecution.

The Court cannot agree with such arguments of the defense.

Thus, the arguments of the defense that the review was conducted by individuals, whose identities were not known to the investigation, have been fully rebutted during the investigation at the trial, in particular by the testimony given by witnesses V. V. Vynokurov, I. Yu. Klymovych, Ya. H. Dykovytskyy, K. V. Borodin, A. V. Mykhalska.

The reference of the defense team to the failure to comply with the form of presentation of the results of the conducted review is groundless, because, pursuant to the requirements of Resolution of the Cabinet of Ministers of Ukraine No. 886, dated June 30, 2006, "On Approval of the Procedure for Conducting Reviews by Working Groups of Central Executive Agencies," the results of performed tasks, determined in the work plan of review of financial and business activities of central and local executive authorities and business entities of the state sector of the economy by working groups of central executive agencies and their local bodies, upon the decision of the Cabinet of Ministers of Ukraine or order of the Prime Minister of Ukraine, shall be executed in a separate report.

Forensic Economical Examination Report No. 3573/11-19, dated April 21, 2011 (case sheets 208–212, Vol. 1) confirmed, on the regulatory basis and by documents, the loss of assets and financial damages to Naftogaz of Ukraine NJSC, as specified in the Report (Interim) of the Commission Review of Certain Aspects of Financial and Business Activities of PJSP National Joint Stock Company Naftogaz of Ukraine for the Period from January 1, 2008, to December 31, 2010, in the amount of $194.6 million, on a condition of conclusion of the gas supply contract between Gazprom JSC and Naftogaz of Ukraine NJSC for

2009–2019 No. KP, dated January 19, 2009, and Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the period of 2009–2019 No. TKHU, dated January 19, 2009, in violation of the terms of the Agreement Between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on Additional Measures to Procure Russian Natural Gas Transit via the Territory of Ukraine, dated October 4, 2001 (ratified by Law of Ukraine No. 2797-III, dated November 15, 2001), as a result of which the payment for 1,000 cubic meters of natural gas has increased by $53.48 (53 dollars 48 cents) and the payment rate for transit in 2009, versus 2008, remained unchanged and constituted $1.7 (1 dollar 7[0] cents) per 1,000 cubic meters per each 100 kilometer distance, which has been confirmed on the regulatory basis and by documents.

The Court deems it possible to accept this evidence as admissible without additional scrutiny, because the Forensic Economical Examination Report contains the direct, peremptory conclusions, which are fully consistent with other evidences examined by the Court.

By the document titled: "General Report of the Commission Review of Certain Aspects of Financial and Business Activities of PJSP National Joint Stock Company Naftogaz of Ukraine for the Period from January 1, 2008, to December 31, 2010" (case sheets 100–125, Vol. 13), which contains data that confirm the following circumstances relevant for the correct determination in the case: the natural gas price in 2009, as compared to 2008, increased by $53.48 per 1,000 cubic meters, or by 29.8% (from $179.5 per 1,000 cubic meters in 2008 to $232.98 per 1,000 cubic meters in 2009) and in 2010, as compared to 2008, by $77.19 per 1,000 cubic meters, or by 43% (from $179.5 per 1,000 cubic meters in 2008 to $256.69 per 1,000 cubic meters in 2009); the payment rate for transit in 2009, versus 2008, remained unchanged and constituted $1.7 per 1,000 cubic meters per 100 km distance; also, in 2009, with the unchanged rate for transit, the purchase price of the gas for production and technological needs (3.639 billion cubic meters) increased by 29.8%, which led to the increase in the expenditure component of the transit operations by $194.6 million per 1,000 cubic meters; the purchase costs of 26.8 billion cubic meters of natural gas for the needs of Ukrainian consumers in 2009 increased by $1,434.7 million versus 2008 and, in 2010, by $2,815.5 million due to the change from the fixed price of imported natural gas to the price determined by formula. According to the conclusion based on the Report data, the conclusion of Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019 No. TKHU, dated January 19, 2009, in violation of the terms of the Agreement Between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on Additional Measures to Procure Russian Natural Gas Transit via the Territory of Ukraine, dated October 4, 2001, which is an integral part of the Ukrainian legislation, caused in 2009, at the unchanged rate for transit ($1.7), an increase by 29.8% of the purchase price of the 3.639 billion cubic meters of natural gas for the production and technological needs. Consequently, the purchase costs of 3.639 billion cubic meters of imported natural gas for production and technological needs increased by the amount of $194.6 million, or UAH 1,515 million. However, taking into consideration the *de facto* distribution of the imported natural gas, which included a business operation of illegal placing of 11 billion cubic meters of natural gas to account, the actual damages suffered by Naftogaz of Ukraine NJSC as a result of the natural gas sale for production and technological needs in 2009, equal UAH 783.7 (weighted-average

cost of production from UAH 999.73 to UAH 1,595.25 per 1,000 cubic meters at its sale price of UAH 1,223 to UAH 1,382.15 per 1,000 cubic meters). In addition, the increase in the weighted-average price of imported natural gas under Natural Gas Purchase and Sale Contract for 2009–2019 No. KP, dated January 19, 2009, from $179.5 per 1,000 cubic meters in 2008 to $232.98 in 2009 and $256.69 in 2010 resulted in increase of the natural gas costs for institutions and organizations, financed from the state and local budgets, by UAH 941 million (in 2009, by UAH 357 million; in 2010, by UAH 584 million). At the same time, Naftogaz of Ukraine NJSC suffered loss in the amount of UAH 20,632.3 million, as a result of imported natural gas transfer to ROSUKRENERGO AG, in compliance with the second separate (interim) Arbitration Award, dated June 8, 2010. From the sales of imported natural gas to the heating enterprises, in 2009 and 2010, the Company suffered losses in the amount of UAH 9,469.3 million (in 2009, UAH 2,359.7 million; in 2010, UAH 7, 109.6 million).

The defense team arguments for inadmissibility of the evidence: “General Report of the Commission Review of Certain Aspects of Financial and Business Activities of PJSP National Joint Stock Company Naftogaz of Ukraine for the Period from January 1, 2008, to December 31, 2010” are similar to the arguments contained in the motion for declaration of the evidence: “Report (Interim) of the Commission Review of Certain Aspects of Financial and Business Activities of PJSP National Joint Stock Company Naftogaz of Ukraine for the Period from January 1, 2008, to December 31, 2010” as inadmissible and are have been fully rebutted during the investigation at the trial.

Forensic Economical Examination Report No. 4049/11-19, dated May 12, 2011 (case sheets 133–143, Vol. 13) confirmed the loss of assets and financial damages to Naftogaz of Ukraine NJSC, as specified in the conclusions of the General Report of the Commission Review of Certain Aspects of Financial and Business Activities of PJSP National Joint Stock Company Naftogaz of Ukraine for the Period from January 1, 2008, to December 31, 2010, on a condition of conclusion between Gazprom JSC and Naftogaz of Ukraine NJSC of the Natural Gas Purchase and Sale Contract for 2009–2019, dated January 19, 2009, and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the period of 2009–2019, dated January 19, 2009, in violation of the terms of the Agreement Between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on Additional Measures to Procure Russian Natural Gas Transit via the Territory of Ukraine, dated October 4, 2001 (ratified by Law of Ukraine No. 2797-III, dated November 15, 2001), as a result of which the payment for 1,000 cubic meters of natural gas has increased by $53.48 and the payment rate for transit in 2009, versus 2008, remained unchanged and constituted $1.7 per 1,000 cubic meters per 100 kilometer distance, which has been confirmed, on the regulatory basis and by documents, in the amount of $194,625,386.70, calculated using the weighted-average price, which resulted in losses for the above amount, or UAH 1,516,365,234.94. Also, the conclusion has been confirmed, on the regulatory basis and by documents, that due to the natural gas write-off at its weighted-average cost of production, the cost of original cost of natural gas for production and technological needs, in 2009, exceeded the proceeds from its sales by HRN 783.7 million.

The Court deems it possible to accept this evidence as admissible without additional scrutiny, because the Forensic Economical

Examination Report contains the direct, peremptory conclusions, which are fully consistent with other evidences examined by the Court.

By the Memorandum between the Government of Russian Federation and the Cabinet of Ministers of Ukraine of cooperation in the gas sphere (case sheet 291, Vol. 13, copy), signed on October 2, 2008 by the Prime-Ministers of the Russian Federation and Ukraine, concerning the step-by-step, within a three-year period, transition to the market, economically justified and mutually agreed prices of imported natural gas for consumers in Ukraine and tariffs for transit natural gas via the territory of Ukraine.

By the Directives for the delegation of Ukraine headed by the Prime Minister of Ukraine Yu. V. Tymoshenko in negotiations during the working visit to the Russian Federation, approved by the President of Ukraine's Decree No. 140-6t/2008, dated February 19, 2008, the Directives for negotiations during the working visit of the Prime Minister of Ukraine to the Russian Federation, approved by the President of Ukraine's Decree No. 889/2008, dated October 1, 2008 (case sheets 131–147, Vol. 8), which intended to establish predictable and transparent price of the natural gas delivered to Ukraine from the territory of the Russian Federation, as well as establish tariffs for transit and storage of the natural gas in the territory of Ukraine, including the need of mutual agreement of the natural gas prices and the tariffs for its transit and storage.

The Court considers groundless the statement made by the defense that for admission of the above Directives, approved by Decrees of the President of Ukraine, confirmed by proper evidence in the case, duly certified copies of the Decrees of the President of Ukraine along with their attachments are required.

Thus, pursuant to Article 3 of the President of Ukraine's Decree No. 503/97, dated June 10, 1997, "On the Procedure for Official Promulgation of the Legislative Acts and their Entry into Force," the individuals, government authorities, businesses, institutions and organizations, in exercising their rights and obligations, must apply the laws of Ukraine, other acts of the Verkhovna Rada of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, published in the official newspapers or received under the established procedure from the issuing authority.

As provided for by Article 7 of the President of Ukraine's Decree No. 503/97, dated June 10, 1997, acts of the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, which do not have general significance or law-making character, may be exempted from publication, pursuant to the decision of the respective authority. Such acts and the classified acts shall be officially promulgated by way of forwarding them to the respective government authorities and local governments, and by further notification of the businesses, institutions, organizations and individuals, to whom they apply. The non-published acts of the Verkhovna Rada of Ukraine and the President of Ukraine shall come into force at the time of their receipt by the government authorities and local governments, unless otherwise determined by the issuing authority.

Taking into account that the copies of the President of Ukraine's Decrees No. 889/2008, dated October 1, 2008, and No. 140-6t/2008, dated February 19, 2008, along with their attachments (case sheets 130, 141, Vol. 8), were received from the Administration of the President of Ukraine by the authority, which conducted the pre-trial investigation, the Court considers the above evidence as appropriate and admissible.

The Court expresses its criticism with regard to the arguments of defense that the following evidences are exculpatory for Yu. V. Tymoshenko: the letter from the Ministry of Justice, dated April 7, 2001 (case sheets 182–187, Vol. 1 – copy); the letter from the Deputy Prosecutor General of Ukraine, dated June 18, 2010 (case sheets 10–11, Vol. 2); the letter, dated May 15, 2011, signed by the O. Medvedko, the Prosecutor General of Ukraine, and addressed to the Administration of the President of Ukraine; letter No. 05-17/793, dated July 26, 2010, from the Supervision and Auditing Administration; the transcript of the session of the Cabinet of Ministers of Ukraine, dated January 19, 2009 (case sheets 114–137, Vol. 6); the transcript of the session of the Cabinet of Ministers of Ukraine, dated January 21, 2009 (case sheets 138–220, Vol. 6); the Expert Opinion of the V. M. Koretsky Memorial Institute of State and Law of the National Academy of Sciences of Ukraine (case sheets 44–49, Vol. 23); the consolidated financial statements of Naftogaz of Ukraine NJSC for 2009 prepared in accordance with the international standards, based on the results of the audit performed by Ernst and Young Ukraudit Closed Joint Stock Company (CJSC); the Scientific and Advisory Opinion, prepared by P. P. Andrushko, Professor, Head of the Department of Criminal law and Criminology of the School of Law of the Taras Shevchenko Memorial, Kyiv National University, on the criminal legal evaluation of actions of certain officials related to the customs clearance of 11 billion cubic meters of natural gas pursuant to the contracts between Naftogaz of Ukraine NJSC and Gazprom JSC signed on January 20, 2009; Report No. 20/11, dated July 12, 2011, prepared by Alternatyva Center for Forensic Examinations, LLC; the letters from Naftogaz of Ukraine NJSC regarding the correspondence with the Prosecutor General's Office of Ukraine and their attachments (case sheets 1–273, Vol. 3); the research opinion on the report of completion of the Naftogaz of Ukraine NJSC administration's financial plan, approved by Resolution of the Cabinet of Ministers of Ukraine No. 1431, dated December 29, 2009 (case sheets 201–224, Vol. 14); the Scientific and Advisory Opinion (Preliminary) of P. P. Andrushko, Professor, Head of the Department of Criminal law and Criminology of the School of Law of the Taras Shevchenko Memorial, Kyiv National University, on the matters contained in the request of Yu. M. Sukhov, private attorney, dated August 23, 2011, with regard to the criminal legal evaluation of the Prime Minister of Ukraine Yu. V. Tymoshenko's actions, related to the Directives of the Prime Minister of Ukraine, issued on January 19, 2009 (case sheets 28–44, Vol. 27); and testimonies of witnesses V. P. Nagrebelnyy, M. V. Onishchuk, V. V. Kudryavtsev, T. V. Kornyakova, O. A. Koval, I. S. Ratushnyak, O. V. Turchinov.

During the judicial investigation, the Court verified the testimony of the Defendant that, on January 19, 2009, in Kyiv, at the request of O. V. Dubyna, Chairman of the Board of Naftogaz of Ukraine NJSC, she issued a separate order to the Minister of Fuel and Energy of Ukraine and, as an attachment to it, the approved Directives of the Prime Minister of Ukraine for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on conclusion the Natural Gas Purchase and Sale Contract for 2009–2019, and the Defendant's statement, that the said document, a separate order to the Minister of Fuel and Energy of Ukraine with attachment of the Directives of the Prime Minister of Ukraine for the delegation of Naftogaz of Ukraine NJSC, is not an entitling document, this document is not a regulatory instrument, this document has a status of the Prime Minister of Ukraine executive document integrating the legal will set forth in other legal documents, which were accepted long before January 19, 2009.

Thus, witness Yu. V. Prodan, who, as of January 2009, held the position of Minister of Fuel and Energy of Ukraine, interrogated by the Court, in his

testimony stated that, after April 2008, Naftogaz of Ukraine NJSC started negotiations on conclusion of the natural gas supply contracts for 2009. In doing this, Naftogaz of Ukraine NJSC and the Ministry of Fuel and Energy relied on the Decree of the President of Ukraine, which obligated them to adopt direct contractual relations without any intermediaries and to make a contract. The respective negotiations were held during 2008. These matters were considered by commissions on cooperation between Ukraine and the Russian Federation, headed by the Prime-Ministers, and the respective instructions regarding the issue of direct contracts between Naftogaz of Ukraine NJSC and Gazprom JSC for 2009 were also given. In October 2008, a memorandum between the Prime Ministers of Ukraine and the Russian Federation was signed, which placed them under an obligation to conclude separate contracts by October 30, 2008. Unfortunately, through a fault of the Russian Federation, such contracts were not concluded, because the gas purchase price was not agreed upon. The Russian side demanded that the rate for transit of Russian gas remained unchanged. By November 2008, the contract was not signed, because Naftogaz of Ukraine NJSC could not come to an agreement with Gazprom JSC. From January 1, 2009, the delivery of gas for Ukraine was suspended, while the Russian Federation declared that the gas was being delivered. From January 7, 2009, the Russian side shut off the gas supplies to Ukraine completely, including those for the European consumers, and the Ukrainian gas transportation system was not working in the regulatory mode, it operated in reverse mode. In such circumstances, harsh restrictions on gas consumption by the consumers were introduced. These harsh restrictions were introduced from January 1, 2009. First, the restrictions applied to the residential consumers—gas payers, and thereafter they were extended to businesses. The situation was very threatening and any sudden changes could result in the loss of gas consumption by the consumers in the east of the country. Under these circumstances, visits to the Russian Federation were made for held negotiations with the Prime Minster Putin. Starting January 2, 2009, the witness, on the instructions of the President of Ukraine, informed the representatives of three European countries, first of all, the Prime Minister of the Czech Republic, which at the time presided in the European Union, on the actions of the Russian side and reassured the representatives of the European Union that Ukraine was strictly complied and would comply with its obligations regarding the transit of gas to the European countries. The representatives of the European Union, unofficially, accepted and understood us, but on the official level, we did not receive the support we were entitled to, because they demanded from us to reach an agreement with the Russian side as soon as possible. Without actually intervening in this process, they asked us to reach an agreement with the Russian side and, as soon as possible, to resume the gas delivery suspended by it on January 7, 2009. The gas transportation system was practically working at the level of satisfying the customers' needs. In such conditions, the negotiations in Moscow started. The Russian side set forth very harsh terms on the price of gas, the figure of $450 was mentioned as the price of gas to start from January 1, 2009. The Russian side insisted that the rate for gas transit should remain unchanged. As a result of the arrangement between the Prime-Ministers of Ukraine and Russia, an agreement was reached for direct supplies of gas to Naftogaz of Ukraine NJSC, without intermediaries. There were made arrangements regarding 20% discount from the gas price for 2009, there were made arrangements about receiving gas at a special price. Also, an agreement was reached to change the price for gas transit starting

from 2010, because the previous price was in effect up to 2010. Subsequently, the contracts were signed by the heads of Naftogaz of Ukraine NJSC and Gazprom JSC. After that, the transit of gas both to Ukraine and to the European countries resumed.

During the court proceedings, witness Yu. V. Prodan stated that he received from the Prime Minister of Ukraine Yu. V. Tymoshenko an instruction to notify Naftogaz of Ukraine NJSC of the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the natural gas purchase and sale contracts for 2009–2019 and contract for volume and terms of natural gas transit via the territory of Ukraine for the period of 2009–2019, which were also given to him by Yu. V. Tymoshenko. Upon reviewing the Directives, he countersigned them and, most possible, transferred them to O. V. Dubyna, Chairman of the Board of Naftogaz of Ukraine NJSC. He considered the Directives as an order from the Prime Minster of Ukraine.

During the court proceedings, witness Yu. V. Prodan stated that, among his documents, he had found a copy on the instruction prepared by the Prime Minister of Ukraine Yu. V. Tymoshenko and recalled it. He could not tell to the Court, where exactly the original instruction, whose copy he found among his documents, was or where it is now, and whether he personally gave the Directives to O. V. Dubyna, Chairman of the Board of Naftogaz of Ukraine NJSC, or the latter took them himself from his table in the negotiation room.

The testimony given by witness Yu. V. Prodan, insofar as they relate to the receipt from the Prime Minister of Ukraine Yu. V. Tymoshenko of the instruction to inform Naftogaz of Ukraine NJSC about the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the natural gas purchase and sale contracts for 2009–2019 and contract for volume and terms of natural gas transit via the territory of Ukraine for the period of 2009–2019 and to transfer the Directives to O. V. Dubyna, Chairman of the Board of Naftogaz of Ukraine NJSC, does not match with the testimony given by Yu. V. Prodan during the pretrial investigation, is contradictory, based on the witness's assumptions and is rebutted by the body of evidence collected and investigated in the court proceedings, in particular, by the testimony of witness O. V. Dubyna, who testified that the Directives were given to him by the Prime Minister of Ukraine Yu. V. Tymoshenko personally, and, therefore, the Court expresses its criticism with regard to the testimony of witness Yu. V. Prodan in this regard.

Witness O. V. Turchinov, who, from December 2007 to March 2010, held the position of First Vice Prime Minister of Ukraine, interrogated by the Court, told the Court that the Prime Minister of Ukraine Yu. V. Tymoshenko, taking into account the crisis situation with supply of natural gas to Ukraine and its transit to other European countries, assumed the responsibility and went to Moscow, where, on January 17–18, 2009, she held negotiations with the President of the Russian Federation and the Prime Minister of the Russian Federation. Before the negotiations had started, [the terms] were harsh and uncompromising, in fact, the gas price of $450, and this sale price, in fact, made Ukraine non-competitive, for all practical purposes, in all sectors of the economy. During the negotiations, Yu. V. Tymoshenko, despite Russia's rigid stance, managed to convince the Russian side into obtaining [sic] the 20% discount from the gas price in 2009. Yu. V. Tymoshenko managed to reach an agreement, to convince the Russian side into selling to Ukraine the gas, which RosUkrEnergo was unable to buy out. The Russian side agreed to sell this gas to Ukraine at the reduced prices, that is, at the prices of past years. Thus, thanks to the negotiations conducted by Yu. V. Tymoshenko, Ukraine

received gas, in 2009, in average, at the price of $232 per one thousand cubic meters. After she returned from Moscow late night on January 18, 2009, Yu. V. Tymoshenko had to leave for Moscow again, on January 19, 2009, for the signing of respective agreements by Naftogaz of Ukraine NJSC. Because she was short of time and had to go to Moscow again, before the Russian side had a chance to withdraw the discounts they promised, she prepared instructions for Naftogaz of Ukraine NJSC to sign the agreements while taking into account her arrangements, that is, what was in these instructions, which she drafted in the form of directives, it is the twenty percent discount and, what is most important, the $450 was not a fixed price, but a price based on formula. It was such an instruction, drafted in the form of directives, that Yulia Volodymyrivna Tymoshenko prepared for Minister of Fuel and Energy of Ukraine, Yu. V. Prodan, and, accordingly, for Naftogaz of Ukraine NJSC through the Minister of Fuel and Energy. He saw Yu. V. Tymoshenko off before she flew to Moscow, and the Prime Minister instructed him to inform the Government on the agreements reached by her at the negotiations in Moscow.

Yu. V. Tymoshenko asked the witness to explain the situation to the members of the Cabinet of Ministers of Ukraine in order to obtain their political and moral support, to ensure that no member of the Government would resort to a demarche or make a statement, which could ruin the negotiations. That is why he received the instructions and a copy of these Directives. He called P. M. Krupko, the Minister of the Cabinet of Ministers, and asked the latter to convene an extraordinary session of the Cabinet of Ministers of Ukraine for January 19, 2009. At the session of the Cabinet of Ministers of Ukraine on January 19, 2009, the witness, acting on the instructions, informed in detail the members of the Government on the arduous negotiations, which held Yu. V. Tymoshenko and on those discounts she managed to get, which would somehow allow to maintain the energy balance in Ukraine. At the session of the Cabinet of Ministers of Ukraine, on January 19, 2009, he distributed among the members of the Government photocopies of the Directives signed by the Prime Minister of Ukraine. At the session of the Cabinet of Ministers of Ukraine, nobody spoke against signing the agreements on the terms agreed by the Prime Minister. Nobody expressed an opinion to the effect that the agreements may not be signed, because everybody understood how dangerous the situation in Ukraine was and that there was no alternative to what the Prime Minister had done to save Ukraine. On January 21, 2009, a regular session of the Cabinet of Ministers of Ukraine was held, at which Yu. V. Tymoshenko gave a detailed account of the signed agreements and of achievements made in the Russian Federation. The Government fully approved the results achieved on January 19, 2009, in Moscow, this was already approved by vote, and this was the Government position.

Moreover, in his testimony, O. V. Turchinov stated that, at the session of the Cabinet of Ministers of Ukraine, on January 19, 2009, the Directives could not be brought up for vote, because it was not necessary and his task was only to inform the Government on the developments in Moscow.

The assessment of the Directives as mere instructions of the Prime Minister of Ukraine, given by O. V. Turchinov, is based on the witness's assumptions and is rebutted by the body of evidence collected and investigated by the Court.

The statement of O. V. Turchinov that, at the sessions of the Cabinet of Ministers of Ukraine, both on January 19, 2009, and on

January 21, 2009, none of the members of the Cabinet of Ministers of Ukraine spoke for unacceptability of the agreements reached, is fully rebutted by the evidence investigated in the court proceedings, namely, the Transcript of the session of the Cabinet of Ministers of Ukraine, dated January 19, 2009, and testimonies of witnesses Yu. I. Yekhanurov, Yo. V. Vinskyy, I. O. Vakarchuk, V. S. Ohryzko, Yu. O. Pavlenko, V. M. Shandra, M. V. Onishchuk, V. M. Pynzenyk.

The testimony of O. V. Turchinov that, at the session of the Cabinet of Ministers of Ukraine on January 19, 2009, it was not anticipated to pass the order regarding approval of the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on conclusion of the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019, is fully rebutted by the evidence investigated by the Court, namely, the Transcript of the session of the Cabinet of Ministers of Ukraine, dated January 19, 2009, which provides direct evidence that the second item on the agenda at the session of the Cabinet of Ministers of Ukraine on January 19, 2009, was the issue of foreign economic activities of Naftogaz of Ukraine NJSC, and that during the discussion, O. V. Turchinov stressed on the need to support the Directives; and the Agenda of the session of the Cabinet of Ministers of Ukraine, dated January 19, 2009, and the draft Order of the Cabinet of Ministers of Ukraine titled "Regarding Naftogaz of Ukraine NJSC foreign economic activities," provide direct evidence that it was planned, at the session of the Cabinet of Ministers of Ukraine, on January 19, 2009, to approve the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on conclusion of the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019.

O. V. Turchinov informed the Court that he was and remains a direct report of Yu. V. Tymoshenko, his testimony is rebutted by evidence investigated by the Court, therefore the Court expresses its criticism with regard to the testimony of this witness.

Witness M. O. Livinskyy, who, from December 2007 to March 2010, held the position of Chief of the Staff of the Prime Minister of Ukraine Yu. V. Tymoshenko and was interrogated by the Court, testified that, on January 16, 2009, he was contacted by the staff of the Prime Minister of the Russian Federation with a request to arrange for a telephone conversation between the Prime Minister of Ukraine and the Prime Minister of Russia. Such a conversation was arranged, and the witness was present in the Prime Minister's office during a part of the conversation, when it was said that the President of the Russian Federation Medvedev, convenes a conference, but Yu. V. Tymoshenko has been invited to attend personally by the Prime Minister of the Russian Federation V. V. Putin and he would like very much that Ukraine was represented at this conference, because other consumers of Russian gas would attend it. V. V. Putin told that, during this conference, he considers it possible to held negotiations between the two Governments, outside, before or after the summit, to resolve the crisis situation emerged around the supplies of natural gas to Ukraine and its transit to European countries. After Yu. V. Tymoshenko consulted Yu. V. Prodan, the Minister of the Fuel and Energy of Ukraine, and other members of the Government, it was decided to get a delegation for the Russian Federation ready for January 17, 2009, to participate in the summit of

the heads of states and governments concerning the issues of energy security and supply of Russian natural from Russia to European countries, as well as to held the intergovernmental negotiations, which, also, had to take place on January 17, 2009, either before or after the summit. The witness was in charge of preparation of the Ukrainian delegation. On the following day, Saturday, January 17, 2009, the Ukrainian delegation, headed by the Prime Minister of Ukraine flew to Moscow. The delegation included the members of the Government Yu. V. Tymoshenko, H. M. Nemirya, Yu. V. Prodan along with the heads of Naftogaz of Ukraine NJSC. After the summit, the negotiations between the Ukrainian and Russian sides were held in Moscow, as a result of which the parties reached an agreement on basic solutions, which allowed the prolonged and grave gas crisis to settle and became a foundation and basis for preparation and conclusion of the contracts. The Prime Ministers of both countries, at the news conference, instructed the heads of the business entities to develop, agree, spell out, mandatory endorse, do everything to prepare the draft contracts, which would settle the entire complex of problems both of supply of gas and transit of gas and the gas price, by 19 January 2009. The contracts had to be spelled out, prepared by 19 January 2009. As ordered by Yu. V. Tymoshenko, the Minister of Fuel and Energy of Ukraine and the delegation of Naftogaz of Ukraine NJSC remained in Moscow to continue the negotiations. The rest of the delegation departed for Kyiv. On January 19, 2009, in the morning, the Government delegation, headed by the Prime Minister of Ukraine Yu. V. Tymoshenko, departed for Moscow. On January 19, 2009, while in the House of the Government of the Russian Federation, Yu. V. Tymoshenko asked the witness to give her the materials for the visit, took out the Order of them and, also, took out the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on conclusion of the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019. Yu. V. Tymoshenko showed the Directives to O. V. Dubyna, who reviewed the document, and thereafter she gave the document to Yu. V. Prodan, who read through the Directives, signed them and gave to O. V. Dubyna, Chairman of the Board of Naftogaz of Ukraine NJSC.

In his testimony, witness M. O. Livinskyy stated that he had not personally prepared the document titled “The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on conclusion of the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019.” He did not receive instructions to prepare it and nobody of the Staff ordered him to prepare this document. He believes that this document had been prepared in a wrong and illiterate manner.

The Court considers ungrounded the testimony of M. O. Livinskyy, who alleges that the document titled “The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on conclusion of the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019” bears not the manual signature of Yu. V. Tymoshenko, but a facsimile, because it was confirmed by Expert Report No 3616/11-11/3617/11-13, dated April 20, 2011, which is admitted by the Court as proper evidence, that the signature on behalf of Yu. V. Tymoshenko on the label “Approved, Prime Minister Yu. V.

Tymoshenko" of the document titled "The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on conclusion of the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019," dated January 19, 2009, was made by Yu. V. Tymoshenko with water soluble ink of a pen.

The Court believes that, in another part of his testimony, witness M. O. Livinskyy, who currently serves as a chief officer of the Head of the political party Vseukrayinske Obyednannya Batkivshchyna, Yu. V. Tymoshenko, was and remains a direct report of Yu. V. Tymoshenko, gave testimony regarding the peculiarities of his work in the Cabinet of Ministers of Ukraine and informed that he did not know, who, on whose direction and for what purpose prepared the document titled "The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on conclusion of the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019." His testimony that the Directives were given by Yu. V. Tymoshenko, along with the Order, addressed [sic] to the Minister of Fuel and Energy of Ukraine Yu. V. Prodan, contradicts his own testimony given in the pre-trial investigation that he could not say at all, whether he ever saw the Directives, and is rebutted by the testimony of O. V. Dubyna, who both in the pre-trial investigation and at the trial gave consistent, logical testimony that he did not receive any instructions originating from Yu. V. Prodan, the Minister of Fuel and Energy, and that the Directives were given to him by Yu. V. Tymoshenko personally, who also insisted on compliance therewith.

Witness V. P. Nagrebelnyy, having been interrogated during the court proceedings, explained that he could not be a witness in this case, because he knew absolutely no facts relevant to the case under consideration.

It follows from the testimony of witness V. P. Nagrebelnyy that he performed an analysis and provided his opinion at the request of the Prosecutor General's Office of Ukraine for legal evaluation of the concluded gas contracts and the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on conclusion of the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019.

The Court believes that witness V. P. Nagrebelnyy gave testimony, by which he substantiated his expert opinion and provided his own legal evaluation of the legal nature of the document titled "The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on conclusion of the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019," whether the Prime Minister of Ukraine has the authority to approve such a document, as well as of the concluded contracts for Natural Gas Purchase and Sale and its transit in 2009–2019, however, this testimony is not a witness testimony within the meaning of Sec. 68 of the Code of Criminal Procedure of Ukraine and cannot be taken into consideration by the Court in accordance with Sec. 65 of the Code of Criminal Procedure of Ukraine.

Witness M. V. Onishchuk, during the court proceedings, testified that he was present at the extraordinary session of the Government on January 19, 2009, which was chaired by

O. V. Turchinov, the First Vice Prime Minister of Ukraine. The subject matter of discussion at the session of the Government was the draft Directives. The issue of approval of the Directives was withdrawn by O. V. Turchinov from the discussion due to lack of consensus on this issue among the ministers. The testimony of this witness, along with other evidence, confirms the guilt of Yu. V. Tymoshenko, the Defendant, in committing the crime.

In another part, M. V. Onishchuk informed the Court, that no request was made to the Ministry of Justice of Ukraine, which he heads, for providing an opinion on authority to approve or prepare the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on conclusion of the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019, and that he cannot answer as a witness the questions on providing the legal evaluation of the actions of Yu. V. Tymoshenko and approval by her of the Directives, and therefore, the legal evaluation of the above matters is not a witness testimony within the meaning of Sec. 68 of the Code of Criminal Procedure of Ukraine and cannot be taken into consideration by the Court in accordance with Sec. 65 of the Code of Criminal Procedure of Ukraine.

Witnesses V. V. Kudryavtsev and T. V. Kornyakova, during the court proceedings, stated that the letters sent by Deputy Prosecutor General of Ukraine V. V. Kudryavtsev, dated June 18, 2010 (case sheets 10–11, Vol. 2) and by Prosecutor General of Ukraine O. Medvedko, dated June 17, 2010, No. 07/2/1-20343-10 (case sheets 182–183, Vol. 26), regarding the legality of approval by the former Prime Minister of Ukraine, Yu. V. Tymoshenko, of the Directives to Naftogaz of Ukraine NJSC, which were used in signing the gas contracts, dated January 19, 2009, between Naftogaz of Ukraine NJSC and Gazprom JSC, were interim replies, while the final answer based on the results of the review have been never provided, therefore, the Court believes that the testimony of witnesses V. V. Kudryavtsev and T. V. Kornyakova, as well as the said letters, do not rebut the facts established during this trial and in no way justify the actions of Yu. V. Tymoshenko.

Letter No. 05-17/793, dated July 26, 2010, from the Deputy Head of the Main Supervision and Auditing Administration of Ukraine (case sheets 184–185, Vol. 26) contains information that at the time no documents are available in the Main Supervision and Auditing Administration sufficient to answer the question regarding compliance by the officials of Naftogaz of Ukraine NJSC with the procedure of making, on January 19, 2009, the contracts for natural gas supply and transit via the territory of Ukraine for 2009–2019 with Gazprom JSC and whether any material damage was caused as a result of conclusion by Naftogaz of Ukraine NJSC with Gazprom JSC of contracts for natural gas supply and transit via the territory of Ukraine for 2009–2019 and by their performance.

Letter No. 05-17/793, dated July 26, 2010, from the Main Supervision and Auditing Administration contains no data that would rebut the further conclusions of the reviews conducted by the Main Supervision and Auditing Administration and set forth in the Report (Interim) of the Commission Review of Certain Aspects of Financial and Business Activities of PJSP Naftogaz of Ukraine NJSC for the Period from January 1, 2008, to December 31, 2010 (case sheets 191– 199, Vol. 1) and in the General Report of the Commission Review of Certain Aspects of Financial and Business Activities of PJSP National Joint Stock Company Naftogaz of Ukraine for the Period from January 1, 2008, to December 31, 2010 (case sheets 100–125, Vol. 13).

Witness O. A. Koval, who in January 2009, held the position of First Deputy Director of the Economic and Financial Department of the Secretariat of the Cabinet of Ministers of Ukraine, and witness I. S. Ratushnyak, who in January 2009, served as Deputy Minister of the Cabinet of Ministers of Ukraine and oversaw operation of four subdivisions: record keeping, control, public relations and organization of the Government sessions/general organization of the staff work, both stated, during the court proceedings, that the document titled: "The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019" lacks the logo required for the documents of the Cabinet of Ministers of Ukraine. The above document, by the fonts, layout and margins used, does not meet the document management standards of the Cabinet of Ministers of Ukraine.

The Court believes that the testimonies of witnesses O. A. Koval and I. S. Ratushnyak in no way rebut the facts, established at this trial, with regard to the Directives approved by Yu. V. Tymoshenko, the Defendant, for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on the contracts for natural gas purchase and sale and its transit in 2009–2019.

The testimony of Yu. V. Tymoshenko that the "The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019" is an attachment to and a part of her order to Yu. V. Prodan, the Minister of Fuel and Energy of Ukraine, is rebutted by evidence investigated in the court proceedings, in particular, it has been confirmed by the document titled: "The Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019," investigated in the court proceedings, and the Protocol of document inspection, dated April 18, 2011, that Yu. V. Tymoshenko, in violation of the requirements of Art. 19 of the Constitution of Ukraine, by approving these Directives, acting alone, and affixing the seal of the Cabinet of Ministers of Ukraine thereon, obligated the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019, in concluding the Natural Gas Purchase and Sale Contract for 2009–2019 for consumers in Ukraine, to follow the terms set forth in the Directives. The statement that the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on the contracts for natural gas purchase and sale and its transit in 2009–2019 were transferred by Yu. V. Prodan in carrying out the instruction of Yu. V. Tymoshenko is rebutted by the testimony of witnesses O. V. Dubyna and I. M. Didenko, who directly participated in the negotiations in Moscow, and the officials, who signed the contracts with the Gazprom JSC in compliance with the Directives approved by Yu. V. Tymoshenko, acting alone.

The Court takes into consideration that, pursuant to Section 9 of the Rules of the Cabinet of Ministers of Ukraine, the order of the Prime Minister of Ukraine shall be prepared as an official document of executive nature on a special form and comes to the conclusion that the testimony of Yu. V. Tymoshenko, the Defendant, is rebutted by the body of evidence investigated by the Court and has the purpose to avoid responsibility for the crime committed.

Thus, pursuant to Section 9 of the Rules of the Cabinet of Ministers of Ukraine approved by Resolution of the Cabinet of Ministers of Ukraine No. 950, dated July 18, 2007 (as in force in January 2009), the Prime Minister of Ukraine was entitled, in order to direct, coordinate and control the activities of the members of the Cabinet of Ministers, heads of other central executive authorities, the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, to issue orders mandatory for the above authorities and officials. The order of the Prime Minister of Ukraine shall be prepared as an official document of executive nature on a special form and is not associated with review of current correspondence.

During the trial in the case, the defense side argued for the innocence of Yu. V. Tymoshenko in the alleged crime by referring to the fact that the Defendant, holding the position of Prime Minister of Ukraine, instructed Yu. V. Prodan, the Minister of Fuel and Energy of Ukraine, to notify Naftogaz of Ukraine NJSC of her order in the form of the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on conclusion of the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019. The Defendant repeatedly stated before the Court that she had issued such an order of the Prime Minister of Ukraine in the form of Directives and believed that her order could have any name and external form. In support of her statement, the Defendant refers to the Scientific and Advisory Opinion (Preliminary) of P. P. Andrushko, Professor, Head of the Department of Criminal law and Criminology of the Taras Shevchenko Memorial, Kyiv National University, on the matters contained in the request of Yu. M. Sukhov, private attorney, dated August 23, 2011, with regard to the criminal legal evaluation of the Prime Minister of Ukraine Yu. V. Tymoshenko's actions, related to the Directives of the Prime Minister of Ukraine, issued on January 19, 2009 (case sheets 28–44, Vol. 27).

The Court cannot agree with such arguments.

First of all, it should be noted, that absence of a standard form for the order of the Prime Minister of Ukraine in the Rules of the Cabinet of Ministers of Ukraine does not mean that Yu. V. Tymoshenko, holding the position of Prime Minister of Ukraine, has the right to violate the requirements of Article 19 of the Constitution of Ukraine and make decisions beyond the scope of her authority, as well as, in a way not provided for by the Constitution of Ukraine and the laws of Ukraine, to issue directives, whose grounds, procedure for and means of adopting are determined by the Rules of the Cabinet of Ministers of Ukraine, and then, at her own discretion, call the decisions made by her "orders of the Prime Minister of Ukraine."

Pursuant to the Rules of the Cabinet of Ministers of Ukraine, the order of the Prime Minister of Ukraine had to be prepared as an official document of executive nature on a special form. The Directives for the delegation of

Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019, approved by the Prime Minister of Ukraine Yu. V. Tymoshenko, acting alone, neither were prepared on a special form, nor addressed to the members of the Cabinet of Ministers, heads of other central executive authorities, the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, but to the delegation of Naftogaz of Ukraine NJSC.

The arguments of Yu. V. Tymoshenko, the Defendant, and the defense team that casual relationship between issuance by Yu. V. Tymoshenko of the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019 and the infliction of damages has not been established, as well as referring to absence of losses for Naftogaz of Ukraine NJSC in 2009, are fully rebutted by the body of evidence investigated by the Court, namely, by the document—Report (Interim) on the Financial and Business Activities of PJSP National Joint Stock Company Naftogaz of Ukraine, Forensic Economical Examination Report No. 3573/11-19, dated April 21, 2011, the document—General Report of the Commission Review of Certain Aspects of Financial and Business Activities of PJSP National Joint Stock Company Naftogaz of Ukraine for the Period from January 1, 2008, to December 31, 2010, Forensic Economical Examination Report No. 4049/11-19, dated May 12, 2011, which confirm the loss of assets and financial damages to Naftogaz of Ukraine NJSC on a condition of conclusion between Gazprom JSC and Naftogaz of Ukraine NJSC of the Natural Gas Purchase and Sale Contract for 2009–2019, dated January 19, 2009, and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the period of 2009–2019, dated January 19, 2009, in violation of the terms of the Agreement Between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on Additional Measures to Procure Russian Natural Gas Transit via the Territory of Ukraine, dated October 4, 2001 (ratified by Law of Ukraine No. 2797-III, dated November 15, 2001), in the amount of $194,625,386.70, calculated using the weighted-average price, which resulted in losses for the above amount, or UAH 1,516,365,234.94.

The casual relationship between the unlawful actions of Yu. V. Tymoshenko and the infliction of damages has been directly established by the entire body of evidence investigated by the Court, which confirms that the conclusion between Gazprom JSC and Naftogaz of Ukraine NJSC of the Natural Gas Purchase and Sale Contract for 2009–2019, dated January 19, 2009, and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the period of 2009–2019, dated January 19, 2009, in violation of the terms of the Agreement Between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on Additional Measures to Procure Russian Natural Gas Transit via the Territory of Ukraine, dated October 4, 2001 (ratified by Law of Ukraine No. 2797-III, dated November 15, 2001), has occurred exclusively due to the unlawful actions of Yu. V. Tymoshenko, acting alone, of issuance and approval of the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the

Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019.

The arguments of Yu. V. Tymoshenko, the Defendant, and the defense team that the information contained in the research opinion on the report of completion of the Naftogaz of Ukraine NJSC administration's financial plan, approved by Resolution of the Cabinet of Ministers of Ukraine No. 1431, dated December 29, 2009, and the data of consolidated financial statements of Public Joint Stock Partnership Naftogaz of Ukraine NJSC, as shown in the Report on the results of audit performed by Ernst and Young Ukraudit CJSC, demonstrate that the expenses of Naftogaz of Ukraine NJSC to procure the natural gas transit in 2009 are significantly lower than in 2008, which, in their opinion, fully proves the absence of damages in the criminal case and discharges the Defendant, contradict the factual circumstances of the case established during this trial.

Thus, the data of consolidated financial statements of Public Joint Stock Partnership Naftogaz of Ukraine NJSC, as shown [in the Report] on the results of audit performed by Ernst and Young Ukraudit CJSC (sheet 35 of the Report, case sheets 152–212, Vol. 30), as well as the actual data contained in the document titled "Information on Expenses for Transportation of the Company's Oil and Gas in 2009 and 2008," which are reflected in the consolidated financial statements of Naftogaz of Ukraine NJSC for 2009 prepared in accordance with the international standards (case sheets 213–214, Vol. 30), show that the decrease in those expenses in 2009, as compared to the 2008, by UAH 601 million is attributed to the decrease in the gas volumes used for production and technological needs from 5 billion 229 million cubic meters, in 2008, to 3 billion 688 million cubic meters, in 2009, associated with the decrease in volumes of gas transportation by UkrTransGaz SK which, in 2008, was 186 billion cubic meters, and in 2009, 141 billion cubic meters, that is, the volumes of gas transportation in 2009, as compared to 2008, decreased, while the expenses for transportation, in 2009, to the contrary, increased.

Pursuant to the Law of Ukraine "On Forensic Examination," Section 4, independence of forensic expert and accuracy of forensic report shall be ensured, among other things, by the procedural order of appointing the judicial expert and by criminal responsibility of the forensic expert for perjury and refusal to perform his/her duties without valid excuse.

As provided for by Section 25 of the Law of Ukraine "On Scientific and Scientific Technical Expertise," findings of public and other scientific or scientific and technical reviews, as a rule, shall be advisory in nature.

The Scientific and Advisory Opinion (Preliminary) of P. P. Andrushko, Professor, Head of the Department of Criminal law and Criminology of the Taras Shevchenko Memorial, Kyiv National University, on the matters contained in the request of Yu. M. Sukhov, private attorney, dated August 23, 2011, with regard to the criminal legal evaluation of the Prime Minister of Ukraine Yu. V. Tymoshenko's actions, related to the Directives of the Prime Minister of Ukraine, issued on January 19, 2009 (case sheets 28–44, Vol. 27); Annex 1 to the Scientific and Advisory Opinion (Preliminary) on the matters contained in the request of Yu. M. Sukhov, private attorney, with regard to the criminal legal evaluation of actions of certain officials related to the customs clearance of 11 billion cubic meters of natural gas pursuant to the contracts signed on January 20,

2009, between Naftogaz of Ukraine NJSC and Gazprom JSC, prepared by P. P. Andrushko, Professor, PhD, Head of the Department of Criminal law and Criminology of the School of Law of the Taras Shevchenko Memorial, Kyiv National University, on additional matters contained in the request of Yu. M. Sukhov, private attorney, related to conclusion of the above contracts, dated January 20, 2009, related to actions committed by officials in the context of these contracts (case sheets 210–216, Vol. 26); the Scientific and Legal Expert Opinion on the compliance of the contracts dated January 19, 2009, namely Natural Gas Purchase and Sale Contract No. KP and Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine No. TKHU, and Supplement No. 1 to it for assignment of right of demand, as well as the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC (Russian Federation), approved on January 19, 2009, by the Prime Minister of Ukraine, with the legislation of Ukraine, prepared upon Request No. 07/2/1-20343-10, dated May 6, 2010, of the Prosecutor General's Office of Ukraine, pursuant to the Law of Ukraine "On Scientific and Scientific Technical Expertise" (case sheets 44–49, Vol. 23), cannot be considered as forensic examination within the meaning of Section 1 of the Law of Ukraine "On Forensic Examination" and Sec. 75 of the Code of Criminal Procedure of Ukraine, because, as a matter of fact, they reflect personal interpretation of legislative acts and actions of the Defendant, given by the scientists, and, therefore, cannot be admitted by the Court as valid evidence within the meaning of Sec. 65 of the Code of Criminal Procedure.

Expert Research Report No. 20/11, prepared by Alternatyva Center for Forensic Examinations, LLC on July 12, 2011, upon written request of lawyers' association Fortuna Law Firm (case sheets 129–166, Vol. 26—certified copy) and Expert Research Report No. 25/11, prepared by Alternatyva Center for Forensic Examinations, LLC on August 31, 2011, upon written request of defense attorney M. M. Tytarenko (case sheets 48–54, Vol. 27), cannot be admitted by the Court as valid evidence within the meaning of Sec. 65 of the Code of Criminal Procedure of Ukraine, because the persons, who conducted the above examinations, were not warned for criminal responsibility for perjury.

The language of Section 365 of the Code of Criminal Procedure of Ukraine, where constituent elements of crime are connected with conjunction "or" in no way prevents from combining them when stating a charge, and the arguments to the contrary provided by the defense is a free and completely justified interpretation of the provisions of the Code of Criminal Procedure of Ukraine.

Taking the above into consideration, the Court comes to a conclusion that the witness's testimony and the data contained in the documents, to which refers the defense, neither rebut nor affect in any way establishing the facts of the crime in this case, or the conclusions made by the Court regarding the Defendant's guilt or applying characteristics of her actions.

Analyzing all the evidence in the case investigated in the court proceedings collectively, the Court believes that Yu. V. Tymoshenko, the Defendant, by having approved, in violation of the requirements of Art. 19 of the Constitution of Ukraine, the Rules of the Cabinet of Ministers of Ukraine, acting alone, the Directives for the delegation of Naftogaz of Ukraine NJSC in negotiations with Gazprom JSC on signing the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019, by directing O. V. Dubyna, Chairman of the Board of Naftogaz of Ukraine NJSC, to sign

the Contracts under economically unfavorable and unacceptable for Ukraine terms and by giving him those legally binding Directives, while providing him with inaccurate information that the provisions of those Directives were approved on January 19, 2009, by the corresponding Order of the Cabinet of Ministers of Ukraine, acting intentionally, criminally misused the authority granted to her and her official position and committed acts, which were expressly outside the scope of her rights and powers, resulting in grave consequences, that is, a crime in violation of the Criminal Code of Ukraine, Sec. 365 (3).

In imposition of punishment on Yu. V. Tymoshenko, the Defendant, the Court will consider gravity of the crime, which is grave, personality of the Defendant, in particular, data characterizing her and her family status.

Thus, in 2005, in the Russian Federation, against Yu. V. Tymoshenko criminal proceedings were instituted on charges of committing a crime in violation of Sec. 33 (3) and Sec. 291 (2) of the Criminal Code of Russia (conspiracy to give bribe, committed second time), which corresponds to Sec. 27 (3) and Sec. 369 (2) of the Criminal Code of Ukraine. By Resolution of the Deputy Chief of the Investigation Department of the Main Military Prosecutor's Office, dated December 26, 2005, the criminal proceedings against accused Yu. V. Tymoshenko, born on November 27, 1960, were terminated under the statute of limitations. At the same time, the Resolution of the Deputy Chief of the Investigation Department of the Main Military Prosecutor's Office, dated December 26, 2005, noted, that the body of evidence collected in the case had established in the actions of Yu. V. Tymoshenko constituent elements of a crime in violation of Sec. 33 (3) and Sec. 291 (1) of the Criminal Code of the Russian Federation, that is conspiracy to bribe an official through an intermediary.

Yu. V. Tymoshenko, previously not convicted, works as the Head of the political party Vseukrayinske Obyednannya Batkivshchyna, is not registered with a psychiatrist or a narcologist (case sheets 229, 231, Vol. 13).

The Court has not established any circumstances mitigating or aggravating punishment to Yu. V. Tymoshenko.

Taking into consideration the high social danger of the crime committed by Yu. V. Tymoshenko, her personality, absence of any repentance of the crime committed, the Court sees no reasons for imposition of a milder punishment than it is prescribed by law and comes to a conclusion that the punishment chosen for the Defendant should be necessary and sufficient for her correction and prevention of commitment of any new crimes, solely in the form of imprisonment within minimum limits, provided for by the sanction of Sec. 365 (3) of the Criminal Code of Ukraine (as in force at the time when the crime was committed), with deprivation of right to hold positions in government agencies, related to performing the organization and management, as well as administrative and economic functions for a period within the limits of the sanction of Sec. 365 (3) of the Criminal Code of Ukraine.

In the case of PJSP Naftogaz of Ukraine NJSC, a civil action for compensation of material damages caused by the crime has been initiated.

In justification of its claim, PJSP Naftogaz of Ukraine NJSC refers to the fact that, as a result of the actions of Yu. V. Tymoshenko, from January 19, 2009, Naftogaz of Ukraine NJSC started receiving all natural gas from Gazprom JSC

at the price calculated on the base price of $450 for 1,000 cubic meters. As the rate for transit remained unchanged for 2009, the gas purchase price—including gas for production and technological needs—increased, which caused increase in the costs of natural gas transit and resulted in material damages to the state as represented by Naftogaz of Ukraine NJSC in the amount of 1,516,365,234 hryvnas 94 kopecks, which civil claimant asks to collect from the Defendant.

Resisting the claim of Naftogaz of Ukraine NJSC, the defense points out, that the claimant's demand to collect from the Defendant the amount of damages is groundless and not justified by any evidence.

Having evaluated all evidence investigated in the case, the Court believes that the claim of PJSP Naftogaz of Ukraine NJSC for compensation of the damages caused by the crime is to be granted, because the casual relationship between the criminal acts of Yu. V. Tymoshenko and the infliction of damages, as well as the size of the damages have been fully confirmed by the evidence investigated in the court proceedings.

The material evidence in the case: optical disc TDK DVD–R–1–6x speed 4.7GB, on which the TV program SHUSTER.LIVE, aired on May 20, 2011, is recorded (case sheet 300, Vol.13) should be stored together with the materials of this criminal case.

The legal costs of the case related to the examinations, which were conducted, are to be born by the defendant in full.

Based upon the foregoing and pursuant to provisions of Sections 323, 324, and 328 of the Code of Criminal Procedure of Ukraine,

IT IS ORDERED AND ADJUDGED:

That **Yulia Volodymyrivna Tymoshenko** be found guilty of committing a crime in violation of the Criminal Code of Ukraine, Sec. 365 (3) and the punishment be imposed on her in the form of imprisonment for seven (7) years with deprivation of right to hold positions in government agencies, related to performing the organization and management, as well as administrative and economic functions for a period of three (3) years;

That the previous measure of restraint for **Yulia Volodymyrivna Tymoshenko**, until this Judgment has taken legal effect, remained, namely, that she be kept in custody in Pre-trial detention center No. 13 of the State Department of Ukraine for the Execution of Sentences in the City of Kyiv and Kyiv Province;

The term of imprisonment shall commence on September 5, 2011, the detention of Yulia Volodymyrivna Tymoshenko during the pre-trial investigation on May 24, 2011 shall be counted towards the term of imprisonment.

That the material evidence in the case: optical disc TDK DVD–R–1–6x speed 4.7GB, on which the TV program SHUSTER.LIVE, aired on May 20, 2011, is recorded be stored together with the materials of this criminal case.

That a civil action of Public Joint Stock Partnership Naftogaz of Ukraine NJSC be granted.

That from **Yulia Volodymyrivna Tymoshenko** (born on November 27, 1960, registered at the following address: 39 Prospekt Karla Marksa, Apt. 32, Dnipropetrovsk, *de facto* temporarily residing at: 5 Vul. Starokyivska, Village of Kozyn, Obukhivskyy District, Kyivska Province; 15 Vul. Turivska, Kyiv), in favor of Public Joint Stock Partnership National Joint Stock Company Naftogaz of Ukraine (6, Vul. B. Khmelnytskoho, Kyiv-001, 01001, Code ZKPO [Ukrainian National Classification of Businesses and Organizations] 20077720, a/c No. 260053012609, Public Joint Stock Partnership Prominvestbank

[Industrial Investment Bank], Routing No. 300012, Code ZKPO of the Bank: 00039002), one billion five hundred sixteen million three hundred sixty-five

thousand two hundred thirty-four (1,516,365,234.94) hryvnas 94 kopecks in the damages inflicted be collected;

That from Yulia Volodymyrivna Tymoshenko, in favor of the Kyiv Research Institute of Forensic Examinations (6, Vul. Smolenska, Kyiv, 03680, payee: KNDISE, City of Kyiv, a/c 31255272210579 in HUDK (Main Administration of the State Treasury) in Kyiv, Routing No. 820019, Code 02883096) two thousand five hundred thirty-eight (2,538) hryvnas 00 kopecks in legal costs for expert examination No. 3573/11-19 be collected;

That from Yulia Volodymyrivna Tymoshenko, in favor of the Kyiv Research Institute of Forensic Examinations (6, Vul. Smolenska, Kyiv, 03680, payee: KNDISE, City of Kyiv, a/c 31255272210579 in HUDK (Main Administration of the State Treasury) in Kyiv, Routing No. 820019, Code 02883096) four thousand five hundred twelve (4,512) hryvnas 00 kopecks in legal costs for expert examination No. 3616/11-11/3617/11-13 be collected;

That from Yulia Volodymyrivna Tymoshenko, in favor of the Kyiv Research Institute of Forensic Examinations (6, Vul. Smolenska, Kyiv, 03680, payee: KNDISE, City of Kyiv, a/c 31255272210579 in HUDK (Main Administration of the State Treasury) in Kyiv, Routing No. 820019, Code 02883096) three thousand three hundred eighty-four (3,384) hryvnas 00 kopecks in legal costs for expert examination No. 4049/11-19 be collected.

This Judgment may be appealed in the Court of Appeals in the City of Kyiv through the offices of the Pechersky District Court in the City of Kyiv, within 15 days of its announcement.

Judge [signature] **R. V. Kireyev**

[stamp:]
CORRESPONDS TO THE ORIGINAL
As of: *October 11, 2011*
decision (ruling, resolution, judgment)
has not taken legal effect
Judge [signature] *R. V. Kireyev*
Secretary [signature] *Ya. V. Tabala*

[seal:]
Lesser Coat of Arms of Ukraine
Identification No. [illegible]
Pechersky District Court in the City of Kyiv
Ukraine

Appendix 6

The Directives (Jan 19, 2009)
(from case file)

ЗАТВЕРДЖЕНО
Прем'єр-міністр України

Ю.В. ТИМОШЕНКО

від «19» січня 2009 р.

ДИРЕКТИВИ
делегації НАК «Нафтогаз України» на переговори з ВАТ «Газпром» щодо укладання Контракту купівлі-продажу природного газу в 2009 - 2019 роках та Контракту про обсяги та умови транзиту природного газу через територію України на період з 2009 по 2019 роки

Під час переговорів українській делегації керуватися положеннями Конституції та Законів України,Указами Президента України, та цими Директивами.

Виходити з того, що реалізація двосторонніх нормативно - законодавчих актів , а також підписання двосторонніх корпоративних документів щодо постачання природного газу в Україну та його транзиту українською територією повинно забезпечити Україні:

– гарантоване постачання природного газу в Україну для забезпечення балансу його споживання;

– стабільне та прогнозоване за ціною надходження природного газу, збалансованість його ресурсів на довгостроковій основі;

– ефективне використання газотранспортної системи України та зміцнення ролі України як транзитної держави;

– прозору тарифну політику під час здійснення транзиту та достатній для беззбиткової та інвестиційної діяльності рівень ставок транзиту.

Мета переговорів – підписання довгострокових контрактів на постачання природного газу в Україну та на транзит природного газу територією України без участі посередницьких структур.

Вважати головним завданням української делегації:

- розбудову взаємовигідних довгострокових відносин в газовій сфері з урахуванням балансу інтересів сторін, прозорості та стабільності, взаємовигідного співробітництва на умовах стратегічного партнерства.
- забезпечення рівня транзиту газу в обсязі не менше 110 млрд.куб.м на рік в напрямі до європейських країн;
- при підписанні Контракту купівлі продажу природного газу в 2009 -2019 роках для споживачів України керуватися умовами щодо закупівлі природного газу за прямим контрактом з ВАТ «Газпром», за формулою ціни, що містить складові базові нафтопродукти, які використовуються в Європейських країнах (мазут, газойль), передбачивши в 2009 році знижку в розмірі 20% від базового рівня ціни на газ, що визначається за підсумками домовленостей Прем'єр-міністрів України та Російської Федерації 17 січня 2009 року в розмірі 450 дол.США за 1000 куб.метрів;

- передбачити в Контракті про обсяги та умови транзиту природного газу через риторію України на період з 2009 по 2019 роки ставку плати за послуги з транзиту в 09 році в розмірі - 1,7 дол.США за 1000 куб.м на 100 км відстані, а формування ставки ати за послуги з транзиту з 2010 року на базі формули, яка буде відшкодовувати НАК Нафтогаз України» всі експлуатаційні витрати, пов'язані з транзитом природного газу, вну вартість паливного газу, амортизацію вартості ГТС, що використовується для анзиту згідно з справедливою ринковою вартістю ГТС, а також вартість капіталу, раховані на базі реальної ставки вартості капіталу НАК «Нафтогаз України» та раведливою ринковою вартості ГТС, що використовується для транзиту. Зазначена рмула повинна передбачати індексацію всіх зазначених вище елементів згідно з туальними ринковими умовами;

- придбати до «__» ________ 2009 року у ВАТ «Газпром» право вимоги на иродний газ в обсязі не менше 10,345 млрд.куб.м загальною вартістю 1,6 млрд.доларів ША, який належить компанії «Росукренерго АГ» та знаходиться в ПСГ України. Оплату ійснити за рахунок коштів, отриманих в якості авансу за послуги в 2009 році за онтрактом про обсяги та умови транзиту природного газу через територію України на еріод з 2009 по 2019 роки.

Дотримуватися позиції, що Українська сторона через НАК «Нафтогаз України» у овному обсязі виконує взяті зобов'язання щодо транзиту газу та готова збільшувати обсяги ранзиту газу територією України за умови підтвердження російською стороною ресурсів азу для забезпечення потреб України та збільшення обсягів транзиту.

Зосередити увагу російської сторони на тому, що умовами чинних міжурядових угод в газовій сфері та довгострокових контрактів, що будуть укладені передбачається:

- гарантії Російської сторони щодо постачання природного газу для забезпечення балансу газу України;
- гарантії Російської сторони щодо подачі через ВАТ «Газпром» обсягів природного газу для його транзиту територією України;
- гарантії Української сторони щодо забезпечення транзиту російського природного газу територією України.

Appendix 7

The Directives (Jan 19, 2009)
(translation)

[UNOFFICIAL TRANSLATION]

APPROVED
Prime Minister of Ukraine

[seal:] Cabinet of Ministers
of Ukraine

Yu. V. TYMOSHENKO
[signature]
January 19, 2009

THE DIRECTIVES

For the delegation of NAK Naftogaz Ukrainy [Oil and Gas of Ukraine, National Joint Stock Company] in negotiations with OAO Gazprom [Gazprom, Open Joint Stock Company] to sign the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019

In these negotiations, the Ukrainian delegation must follow the provisions of the Constitution and the Laws of Ukraine, Decrees of the President of Ukraine and these Directives.

Proceed on the basis that implementation of bilateral regulatory legal acts and execution of bilateral corporate documents on the delivery of natural gas in Ukraine and its transit via the Ukrainian territory must ensure for Ukraine the following:

- guaranteed supply of natural gas to Ukraine in order to ensure its consumption balance;
- stable and predictable in price natural gas delivery, balance of its resources on a long-term basis;
- efficient use of the gas transportation system of Ukraine and strengthening of Ukraine's role as a transit nation;
- a transparent tariff policy during the performance of transit, as well as an adequate level of transit rates for loss-free and investment activities.

Purpose of the negotiations: to sign long-term contracts for delivery of natural gas to Ukraine and for transit of natural gas via the territory of Ukraine without participation of any intermediaries.

Regard the Ukrainian delegation principal task as follows:

- to develop mutually beneficial, long-term relationship in the sphere of natural gas, taking into account the balance of interests of the parties, transparency and stability, mutually beneficial cooperation based on a strategic partnership;
- to ensure a level of natural gas transit of at least 110 billion cubic meters per year in the direction of European countries;
- in concluding the Natural Gas Purchase and Sale Contract for 2009–2019 for consumers in Ukraine, to follow the terms of the natural gas purchase under a direct contract signed with OAO Gazprom, using a price formula, which shall account for basic oil product components used in the European countries (heating oil, petroleum oil), providing for a 20% discount from the natural gas basic price level, which was determined based on the result of agreements reached between the Prime Ministers of Ukraine and the Russian Federation on January 17, 2009, in the amount of $450 for 1,000 cubic meters;

- in the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019, to provide for the payment rate for transit in 2009 equal to $1.7 for 1,000 cubic meters per 100 km of distance, as well as calculation of the payment rate for transit in 2010 based on a formula, which will compensate NAK Naftogaz Ukrainy for all operating expenses associated with the transit of natural gas, full cost of fuel gas, depreciation value of the gas transportation system used for the transit, based on the fair market value of the gas transportation system, as well as the cost of capital calculated using the NAK Naftogaz Ukrainy cost of capital effective rate and the fair market value of the gas transportation system used for the transit. This formula must account for indexation of all the above components in accordance with actual market conditions;
- before ___ ___________ 2009, to acquire from OAO Gazprom the right of claim for at least 10,345 billion cubic meters of natural gas with total value of $1.6 billion owned by RosUkrEnergo AG and stored in the underground gas storage facilities of Ukraine. The payment shall be made out of the funds obtained as an advanced payment for services to be performed in 2009 under the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019.

Adhere to the position that the Ukrainian party, through NAK Naftogaz Ukrainy, to the full extent has performed its obligations with regard to the natural gas transit and is willing to increase the volumes of natural gas transit via the territory of Ukraine, provided that the Russian party confirms availability of the natural gas resources to meet Ukraine's needs and to increase the transit volumes.

Focus the attention of the Russian party on the fact that the terms and conditions of the current intergovernmental agreements in the sphere of natural gas and the long-term contracts to be concluded provide for the following:

- guarantees of the Russian party with regard to the natural gas supply in order to ensure balance of natural gas in Ukraine;
- guarantees of the Russian party to deliver through NAK Naftogaz Ukrainy the natural gas volumes for transit via the territory of Ukraine;
- guarantees of the Ukrainian party to ensure the transit of the Russian natural gas via the territory of Ukraine.

[signature]

Appendix 8

Cabinet of Ministers Agenda
(Jan. 19, 2009)

[UNOFFICIAL TRANSLATION]

CABINET OF MINISTERS OF UKRAINE

AGENDA

OF THE CABINET OF MINISTERS SESSION

19th of January 2009

At 14.00

1. On signing the Memorandum between the Cabinet of Ministers of Ukraine, National Bank of Ukraine and the Government of the Republic of Belarus, National Bank of the Republic of Belarus on development of the system of activities aimed at intensification of mutual trade and economic cooperation under the conditions of the global financial and economic crisis (*Cabinet of Ministers Decree draft*).

   Speaker: TURCHINOV Olexander Valentynovych — First Vice Prime Minister

2. Issues related to the foreign economic activities of the National JSC Naftogaz of Ukraine (*Cabinet of Ministers Decree draft*)

   Speaker: TURCHINOV Olexander Valentynovych — First Vice Prime Minister

Appendix 9

Cabinet of Ministers Transcript (Jan. 19, 2009)

[UNOFFICIAL TRANSLATION]

T R A N S C R I P T

of the January 19, 2009 Meeting

of the Cabinet of Ministers of Ukraine

O. V. TURCHINOV: Esteemed colleagues, the Minister of Fuel and Energy and the Prime Minister can also take part in our meeting *in absentia*, from Moscow, and they fully agree to and support all of the resolutions that have been passed.

For this reason, I suggest that we waste no time, because this meeting is not a regularly scheduled one, so let's begin. Two items on the agenda. One—pretty straightforward; the other—somewhat more complicated.

Agenda Item 1: Execution of a Memorandum by and between the Cabinet of Ministers of Ukraine, the National Bank of Ukraine and the Government of the Republic of Belarus and the National Bank of the Republic of Belarus on Establishing a Set of Measures to Enhance the Bilateral Trade and Economic Cooperation in View of the World Financial and Economic Crisis

O. V. TURCHINOV: First of all, the President of Ukraine and the President of the Republic of Belarus are meeting one-on-one tomorrow. The meeting is scheduled for tomorrow in Chernihiv, at approximately 11 o'clock. The memorandum has been prepared by our Government and the Government of Belarus, and its purpose is to make sure that, despite the hardships brought about by the financial crisis—while all nations, including ours, are regrettably affected by this crisis—we can come up with a formula for keeping the scope of our trade and economic cooperation from shrinking. Some methods have been proposed—you can see which ones are being proposed—and already approved with all government ministries, and all government ministries have in fact endorsed the memorandum, and it has been agreed to with the Belarusians.

I would like to ask you, on the record, to authorize me as head of the Ukrainian–Belarusian economic cooperation group to sign the memorandum tomorrow at the time of the meeting of the Presidents. Any questions on the subject, esteemed colleagues? On Belarus? No questions on Belarus.

The Minister of Foreign Affairs is here. We are talking about the meeting of the Presidents of Belarus and Ukraine scheduled for tomorrow—it hasn't been cancelled, has it? The meeting will take place, right?

V. S. OHRYZKO: At this point in time, no. We don't have any information that the meeting has been cancelled.

O. V. TURCHINOV: Then we will approve now and authorize me to sign, at the meeting tomorrow, the Belarusian–Ukrainian Memorandum on the mutually beneficial cooperation between our governments in view of the world financial and economic crisis. Any objections? None. The Minister of Foreign Affairs has no objections either.

So, esteemed colleagues, I propose that we put this matter to the vote. Who is in favor? Please vote. Against? Abstained? The resolution is passed.

Yuriy Vitaliyovych, they say you never resurfaced after you dived into an ice-hole?

[A comment] from the attendees.

O. V. TURCHINOV: Please take your seat. I'd like to seize this opportunity, occasioned by the arrival of the Minister of Internal Affairs, and extend my greetings to all of you, dear friends, on the Christian holy day of the Baptism of Our Lord Jesus Christ. They say it is on this day that He was baptized by John in the River Jordan. I wish you all joy and good health. I understand those who dive must be in good health? Especially those who are able to resurface.

Agenda Item 2: Foreign Economic Activities of NAK Naftogaz of Ukraine [Oil and Gas of Ukraine National Joint-Stock Company]

Esteemed colleagues, let us discuss our second agenda item now. As I told you earlier, the Prime Minister and the Minister of Fuel and Energy and the NAK Naftogaz director are now in the capital of the Russian Federation, Moscow, where the signing of an agreement has been discussed arduously for the third day in a row, as you know. Let me tell you again, the negotiations are moving forward with considerable difficulty.

Both the Prime Minister and the Minister of Fuel and Energy <u>have asked for your support of the directives—while they, too, unconditionally support them and vote for them</u>. Let me talk very briefly about the <u>directives</u> in question.

You know Moscow's stand on it, 450 only. This position appears politicized and unacceptable to us. So what kind of a formula is taking shape right now and what are our chances of having this formula implemented? It includes three positions.

The first position is a 20% reduction of gas price for Ukraine compared to the European price. Understandably, the price of $450 proposed by the Russian Federation is unfeasible. This year, the Russians propose that, for a discount, the transit cost is kept at $1.7. But that's exactly where the catch is—the catch that would enable us to come up with a guideline and sign an agreement on terms that would be beneficial to our country. What are these terms? That's the third position—a principled position. It boils down to Russia handing over to us over 10 billion cubic meters of gas currently stored in our gas storage facilities for $1.6 billion. In other words, with this kind of compromise and signing on such terms, the average annual price at which we would be able to sell gas to various industries will total less than $230. In other words, that's basically the positions we held when we just began negotiations at the end of last year.

For this reason, we definitely shouldn't break these terms, as you understand, because if item 3 doesn't work, we definitely won't be able to achieve such an amount of gas and settle our accounts and, generally speaking, the industries—and, in any event, the chemical industry—certainly won't be able to operate at all. At the same time, by reaching agreement on the third position and signing on such terms, only subject to ratification of item 3 with respect to handing over 10 billion cubic meters of gas for $1.6 billion, let me tell you again, we will be able to achieve a decent price, realistic for our economy, from

$210 to $225—at any rate, that's less than 230, and let me remind you that the guideline stood at a top price of $235 at the negotiations held at the end of last year.

That's the kind of formulas we have at this point in time, and I certainly hope that we will be able to sign the agreement on these terms.

Any questions on the subject, esteemed colleagues? Viktor Mykhaylovych, please go ahead.

V. M. PYNZENYK: Esteemed Oleksandr Valentynovych, esteemed colleagues—I have several questions. Question number one: Is the gas volume of 10.3 billion cubic meters really available?

O. V. TURCHINOV: Yes.

V. M. PYNZENYK: I haven't finished my question yet. As far as I can remember, the 4 billion [cubic meters] of the so-called buffer gas as part of this amount, and we said back then that we should have no commitments in this respect. I would like to hear a confirmation: is the gas volume of 10.3 billion [cubic meters] really available?

O. V. TURCHINOV: Let me say it again: we do have 10.3 billion available. We had 11 billion in December, but were compelled by prior agreements to release about 1 billion to RosUkrEnergo. For this reason, we have 10.345 million [sic] left.

V. M. PYNZENYK: I have a few questions more. On what terms and at which border has the price of $450 been fixed? Which country of the world? Which country of the world has $450 paid at its border? The draft guidelines say nothing about the border at which this price is in effect. Is it the Russian–Ukrainian border?

O. V. TURCHINOV: Russian–Ukrainian.

V. M. PYNZENYK: And what countries of the world apply it?

O. V. TURCHINOV: I don't know. These are the terms proposed by the Russian Federation and they wouldn't make any concessions.

V. M. PYNZENYK: Then I have another question: what about the price formula then? It says here, the price formula, and then the direct political price of $450 is specified at the bottom. So where is the formula?

O. V. TURCHINOV: As for the formula, the forthcoming agreement is that we reach the formula price, but the actual formula price will kick in effective 2010. We hope that the formula price will be beneficial for Ukraine nonetheless because gas prices are expected to lower as of the second half of the year, including those for Europe. However, the formula price will definitely apply to the transit, too. In other words, the gas formula and the transit formula—that's the parity position, to the extent possible.

At the same time, Viktor Mykhaylovych, I've told you about the price that we hope to achieve—that's a unique price, so I hope to God we could make it in the current situation. If you have any

negotiating experience, you can apply it to the full extent. But I'd like to reiterate that you can't even imagine how tough the situation was when we just began the negotiations. Right now, we are about to reach a solution that would in effect enable us to stop the gas war and get out of the current gas crisis. Unfortunately, we can talk all we want about our purportedly inexhaustible capacities but, even though I have no intention to upset anyone, our capacities seem to have been pushed to the limit.

V. M. PYNZENYK: May I ask another question? If my understanding is correct, regardless of any changes to the world prices of fuel oil or crude oil, as European price is going down, we have the price of $450 fixed for the year, with a 20% discount and no variation of the transit rate. Is my understanding correct? You have said, however, that the formula will kick in effective 2010; therefore, we fix the price of $450 per thousand cubic meters for 2009.

O. V. TURCHINOV: Viktor Mykhaylovych, I said, less 20%. In addition, I would like to remind those who have had some negotiating experience, that the guidelines constitute the limits that none of the negotiators can exceed. When we succeed in obtaining gas at no cost as a result of the negotiating process, then an agreement on free gas delivery will definitely be signed.

H. M. NEMIRYA: May I offer some information? In response to my request for information regarding the Polish prices, the Vice Prime Minister of Poland has sent me a letter that says that the natural gas price for Poland was US $510.1 per thousand cubic meters for the 4th quarter of 2008 and US $500 per thousand cubic meters for the 1st quarter of 2009.

[A comment] from the attendees.

H. M. NEMIRYA: At the Polish border.

V. M. PYNZENYK: But transit rates are market-based over there.

[A comment] from the attendees.

H. M. NEMIRYA: Wait a minute, transportation costs through Poland are about $2.

[A comment] from the attendees.

O. V. TURCHINOV: No. Let me reiterate, esteemed colleagues—let me say it again, I'm telling you about the formula. Once again, let me put it this way—perhaps I wasn't clear enough the first time, so let me emphasize this: The upper-limit position that we can authorize for the purpose of signing a contract is based on the fact that 450 is the maximum base price subject to the minimum discount of 20%. That's the first position—that's the limit. If they can tie it up with the formula, fine. If they can't, no more than 450 subject to a 20% discount. That's number one.

Further, if the discount is indeed provided, the Russians first demand the price of 1.6, as you know it was agreed to by our predecessors in the signed contracts. However, the price is specified at 1.7, that is, no less than 1.7. That's number two.

The third position is a principled position for the execution of an agreement—no agreement will be signed without it. That's 10.345 billion cubic meters of gas at a price of 1.6 billion. In other words, the gas price is in fact about 150–145, so the cost of gas totals $150, and that's the gas we actually take...

[A comment] from the attendees.

O. V. TURCHINOV: That's the average price, Yosyp Vikentiyovych. I'm not prepared... I'm not the Minister of Fuel and Energy, they have more details, however, the average price that's been clearly fixed totals less than $230.

Y. V. VINSKY: If we take 50 million in total...

O. V. TURCHINOV: Yosyp Vikentiyovych, let me say it again, we have the price, that's our principled position, and let me say it again, I can arrange a telephone call for you now to the Prime Minister, unless she's busy talking with Putin. We have the price of less than $230, Yosyp Vikentiyovych—that's the math, because we won't be taking 50 million, or billion, this year.

V. A. HAYDUK: Esteemed government ministers, allow me to offer you some explanations as to this document that we have here. The basic principle underlying this document points to the fact that we switch to pricing based on the formula that looks like this—I don't want to make any drawings, so I will try to explain in words.

The base price in a corresponding market varies—over a quarter or every other quarter, or every six months, depending on the terms we come up with—based on the price of the equivalent product, be it fuel oil or gas oil, in proportions that are now average for Europe—40% to 60% for some. Gas oil is for the level of consumption by small consumers. Fuel oil is for major or large consumers.

That's why what is written here, that is, the base price of 450 reduced by 20%—in other words, the formula, it will come out in the format of $36 0, whereas further through the year it will vary based on price variations in the past year. The general practice used in Europe nowadays is that the price lag for the purpose of calculation of fuel oil or gas oil price variations is assumed to be 9 months. For this reason, no price variation effectively occurs anywhere in Europe in the 1st quarter, since the price includes the price that hasn't "peaked out" yet, as the peak came about some time in July, at $147, and everyone expects it to go down only in the 2nd quarter.

As for the transit, the transit principle is also included in the formula; however, the transit rates in our formula are expressly set forth in the Energy Chart as a [price] formation principle. Yes, it is somewhat different and is specified in more detail in the document used for transit price formation purposes. That's because they are not effectively tied up in any country. What kind of problems are

we going to encounter, what do we need to do in 2009, as we have a transit lease fee which is not standard under the Energy Chart. We need to convert it to a land fee and so on, and we need to work on it. Because, in its present shape, it just cannot be included in the actual cost underlying the transit price. That's regarding the document in question.

Plus what Oleksandr Valentynovych has said, that in order to switch to direct contracts with Gazprom, we need to resolve the issue of storage locations, the gas storage facilities owned by RosUkrEnergo. In other words, Russia agrees that we must buy it out. The demands for us to buy it out have been continuing for 8 or 9 months now, and the price that has been formed by now has been reduced against what we had in March, at 3 billion, then in June at 2.2, and now at 1.6. That's regarding the document in question.

O. V. TURCHINOV: In other words, esteemed colleagues, let me sum up again the information that we have. As for the price of the gas stored in our storage facilities. Indeed, it was suggested initially that Ukraine buy out this gas for 3 billion. Why buy out? Because we decline to use any intermediary. That's understandable. Formally, the gas is under contract with RosUkrEnergo, however. As a result, Gazprom makes a resolution, a *tour de force*, regardless of the resistance on the part of its supporters and the RosUkrEnergo supporters, for Ukraine to buy out his gas and settle the accounts with Gazprom in the form of transit because, understandably, the RosUkrEnergo gas comes from Gazprom. In other words, the price is knocked down from 3 billion to 1.6 for 10 billion cubic meters. That's number one.

Further, with respect to the formulated approach. That's what is written here, no doubt, and what the Prime Minister said—the formula, let me say that again, that is based not on 450, but rather on 450 less 20%. How much is that—360, right? 360. That's the base of the formula. As of April, as you know, these positions have been reassessed. At any rate, no major [price] leaps are expected with respect to crude oil or fuel oil. Even though this approach is formula-based, you certainly understand it offers two pros. If prices go down, that's fine; if prices go up, the formula-based approach works, too. In any event, we have a forecast from the Ministry of Fuel and Energy that the price will diminish significantly. It is exactly for this reason—because each quarter the price will be recalculated based on the agreed-to formula. Yosyp Vikentiyovych, I can't tell what the price will be like in April or, say, in June or in September. I don't think anyone can tell you that. However, according to our forecasts, it's going to be much lower than the base price we have assumed and, with this in mind, it's going to be 20% lower at all times for Ukraine, you understand. Because it's going to be 20% lower at all times, anyway—you understand, because we assume the base. For this reason, what we are left with is effectively the transit at the price of 1.7. And the bonus...

[A comment] from the attendees.

O. V. TURCHINOV: And the 20% discount, that's 1.7 for transit—compensation, 1.7 for transit. You see, the transit is 1.7 this year. And the bonus—the main bonus, that's what I said before and am saying again for the fifth time, is 10 billion for $1.6 billion. Please.

Yu. I. YEKHANUROV: Esteemed colleagues, this year we will consume at least 60 billion cubic meters of gas. That's the worst-case scenario. It could be more, so the figures I'm going to cite are

going to be even worse. Our own gas totals about 20 billion, 40 [sic]. Out of these, 10 are offered, 10.345 at a total cost of 1.6 billion—that is, please write down the number, $154.7 for a thousand cubic meters. The remaining 30 billion are offered for $450—in other words, the actual gas price is plus 20%, that is, $540.

O. V. TURCHINOV: No, no, 450 minus 20%, Yuriy Ivanovych. You overlooked that.

Yu. I. YEKHANUROV: 450 including 20.

O. V. TURCHINOV: Minus 20%.

Yu. I. YEKHANUROV: Here's what is written here, "... providing a discount of 20% from the base level, which is to be determined based on the results of agreements..."

O. V. TURCHINOV: Well, 450...

Yu. V. LUTSENKO: Which equals to 450.

O. V. TURCHINOV: Yuriy Ivanovych, that's what I'm saying, really—that's 360.

Yu. I. YEKHANUROV: It means that this paragraph in general is written very badly. It makes no mention at all of the 1st quarter. In the 2nd quarter, the European price will be about $280.

O. V. TURCHINOV: There, that suits us fine.

Yu. I. YEKHANUROV: It doesn't even come close to that here. All right, colleagues, let's look at the calculation methods applied. If we assume—I assumed 450—if we buy 30 billion at the price of 450, 10 billion, 154—now wait a minute—then the average price will total $377. I agree. Take 450, subtract 20%, that's 360, multiply by 30 and then add—so we end up with something like $300 or $310 at the price we apply.

O. V. TURCHINOV: Sorry, I can't agree with your calculations.

Yu. I. YEKHANUROV: Why not?

O. V. TURCHINOV: Let me explain. First of all, we assume 360 as the base. As of April, as you noted correctly, the price will be effectively 280, in proportion with 450—that is, supposedly 280 minus another 20%. So we end up with the price of approximately 210 or 215.

Yu. I. YEKHANUROV: You were right when you pointed out the need for experience. So let me tell you this, if you write 450 here, that's it, it's going to be 450. Where does it say that it's going to extend over a year and so on?

[A comment] from the attendees.

Yu. I. YEKHANUROV: What exactly are you talking about? Colleagues, this paragraph is written very badly—it doesn't offer any itemization by quarter, it covers the entire year at a fixed price. We had very lengthy disputes with them over the formula, and if they accepted the formula, that's a serious victory, for what it's worth. However, colleagues, the price could be 307, or 308, or 310, or 320—it's just estimated numbers for us to know what we're talking about.

That's why, Oleksandr Valentynovych, in view of the fact that I have had some experience in these negotiations and some experience in these disputes, I would like to leave, with your permission, so that I don't say what I'm not supposed to say here. As a statesman, I promise I won't "rock the boat" or "stab" anyone in the back, the way I was stabbed in the back three years ago. Thank you.

O. V. TURCHINOV: You are welcome, Yuriy Ivanovych.

V. M. PYNZENYK: I have a question about the total balance of gas. How much gas are we going to purchase for Ukraine? Will anyone else make gas deliveries to Ukraine? For example, will Gazpromexport be involved?

O. V. TURCHINOV: No. NAK Naftogaz.

V. M. PYNZENYK: If so, how much gas are we going to contract for, what volume? We have 20 billion, so 60 billion most likely won't be enough. How much are we going to buy?

O. V. TURCHINOV: With the kind of forecasts we have, esteemed colleagues, I can understand how Yuriy Ivanovych feels—you know the 2006 theme. I think time will show the contribution each of us has made. But we are living in 2009 now and we are not going to tell who has brought this situation about. We have closed that topic.

Let me go back, however, to the calculations that Yekhanurov talked about. I can't agree with them, yet I agree that the language could indeed be improved.

[A comment] from the attendees.

O. V. TURCHINOV: No, wait a minute! What do you mean, 450? What is the discount for then, Yosyp Vikentiyovych?

[A comment] from the attendees.

O. V. TURCHINOV: What if they assume the base price at $700? $700, you understand?

V. M. SHANDRA: May I ask a question? A question, please? I will ask a question to get around several other questions.

O. V. TURCHINOV: Let me finish first, so that we don't return to this for the fifth time.

The position is a matter of principle, esteemed colleagues: recalculation is to be made on a quarterly basis and it's a downward recalculation. This is built on a formula-based price, as you know, and the European formula is tied to fuel oil and crude oil.

So I would suggest, please go ahead with your question.

V. M. SHANDRA: The language of the last paragraph is very, very bad indeed, so I have two questions.

The first question is this. It follows from this paragraph that the $450 is not an average European price. It is believed by the two prime ministers that this price is average European.

O. V. TURCHINOV: No.

V. M. SHANDRA: Secondly, it states here, subject to agreement by the Prime Minister of Ukraine and the Prime Minister of Russia. So they decided it was 450. I'm not questioning it—perhaps that's how it is.

What will happen in the 2nd quarter? What if they fail to come to any resolution? Well, our Prime Minister says the average European [price] is 250, while their Prime Minister doesn't say it's 250.

You are correct in saying that we have a price formula and it is now weighed for each European nation, so there is no such thing as average European [price].

If they fail to agree, what will this average European [price] be like?

O. V. TURCHINOV: Let me explain.

V. M. SHANDRA: So what will the 20% be subtracted from in the 2nd, 3rd, and 4th quarters? No one has asked this question. So I'm asking this question: what base will be used for the 2nd, 3rd, and 4th quarters? And who defines the term "average European price"?

O. V. TURCHINOV: Thank you. Esteemed colleagues, we all understand that an average European price certainly doesn't exist. Each country has its own price, and some countries even use 3 or 4 prices, because they employ different intermediary suppliers.

Only a few reported data are available to us where prices are mentioned. However, not a single country reports its price officially—I repeat, officially—because that's their business, their state secret, their commercial secret—that's what it effectively becomes under the circumstances in which the world operates today. Effectively, a state secret. That's number one.

The other question concerns the issue of settlements in the 2nd, 3rd, and 4th quarters. This problem is pretty simple. 450 is the position taken by the Russian Federation. It has been acknowledged and it's nothing new. Understandably, it hasn't been initiated by Ukraine. In fact we attempted to save our faces before we fell flat on them in front of our Russian colleagues. They said, 450, so it's going to be 450. We came up with a base price of 360, you see. 360, so as not to say that the base price will be 360, otherwise it will turn out that both the President of the Russian Federation and the Prime

Minister of the Russian Federation don't mean what they say. To prevent this from happening, they wrote "450 minus 20%." Obviously, if they kept their word, the 450 price would hold, but we assume the base at 360.

Now to the 2nd, 3rd, and 4th quarters. Frankly, we don't care what the average European price will be—what we do care about is by how much the price will be reduced in the 2nd, 3rd, and 4th quarters. Let's say it is reduced by 30%—in this case, we take the base price of 360 and reduce it by 30%. If it is to be reduced by 50%, we will take the base price of 360 and reduce it by 50%.

For this reason, esteemed colleagues, we can't tie up to the average European price because, you see, one can say it's been made "out of thin air" by claiming it's average European, whereas we maintain that no, it's not average European.

That's why we tie up to the formula. There is a base, you see—in this particular case, the base is 360. So we tie up to this base. If it is to be reduced twofold, so the base will be reduced, 360 divided by 2—you can count how much. If it is to be reduced by 30%, subtract 30% from the base of 360. That's how we come up with our position.

V. M. SHANDRA: We can count up now just how much we will come up with in the 3rd and in the 3rd [sic] quarters, because there is a 9-month delay. So if we know the price of fuel oil or gas oil in January, we can automatically find out the average price, according to the formula, in the 8th and 9th months, that is, in August and September.

O. V. TURCHINOV: No.

V. M. SHANDRA: What do you mean, no?

O. V. TURCHINOV: I'd like to tell you again...

V. M. SHANDRA: Please tell us. Let someone do the math and tell us.

O. V. TURCHINOV: Colleagues, I'd like to tell you again that you were correct in saying that the price would be reduced by 40% on average.

[A comment] from the attendees.

O. V. TURCHINOV: Let me tell you again: the formula that was signed last year will effectively enter into force in about 9 months—it will be 9 months in April. In other words, the price discount will become formally effective as of April, using the formula approach. Viktor Mykhaylovych, the agreement will reflect this. The agreement that will be signed will reflect this. That's not an agreement—that's a limit we establish. Viktor Mykhaylovych, I have a feeling as if I were taking an exam, and you were the examiner. No? Well, do ask questions—you're just sitting there and deliberating, but let me tell you again, that's my question, perhaps the only one.

I. V. VASYUNYK: I think we're trying to hold back our emotions, because emotions are pointless and ill feelings are pointless, too. We just need to understand the goal that the government has set up. If someone is engaged in negotiations day and night and wants the government to approve this resolution, and if questions arise because the guidelines are impossible to comprehend, then we should just take it in stride.

O. V. TURCHINOV: That's what we're doing, but there are different implications here—all right.

I. V. VASYUNYK: It would be proper for us to review the guidelines a bit faster; however, given the current situation, I believe this is not a time for ill feelings—as the guidelines have been brought before the government, it is time to read them in this context, because their preparation time has obviously been short, so we need to come up with a conclusion how these guidelines would benefit Ukraine.

I apologize for my tardiness, for objective reasons, but in these 15 minutes, when I reviewed the first and the second parts of the guidelines, the situation appears to be, very unfortunately, a classical one, traditional for the recent years. Part one is written very well—I can quote, "guaranteed supplies, stable and balanced deliveries of natural gas with price-based forecasts, effective use of the gas transportation system and understanding of the role of Ukraine as a transit country, a transparent tariff policy during transit, and a level of transit rates sufficient to maintain loss-free investment activities." And, at the end, "The goal of the discussions is to execute long-term contracts for natural gas deliveries in Ukraine and for natural gas transit through the [Ukrainian] territory without involvement of any intermediaries." As far as I can see, only the latter portion is being implemented so far.

Let's read part two. Part two doesn't offer a single answer. Let's look at the end of the next year—perhaps there is someone who is a better and more knowledgeable expert in gas-related matters—can anyone guarantee that after these guidelines have been implemented and a resulting agreement has been signed, we won't spend the end of the next year in the same manner as the end of this year?

So what have we been fighting for? Four days in 2006; almost a month this time. As a result, the first item, as Oleksandr Valentynovych puts it quite correctly, the good name of the Prime Minister of the Russian Federation—that's good that he once—he also cited 470 once, that's the good name of the Prime Minister of the Russian Federation. Four hundred and fifty dollars less 20%. This item could be identified in very simple terms, a "sop." Once again we will be pointed the finger at, for a year in a row, that we have thrown a "sop" to you, friends, we are feeding you, I don't know from what price. Because everyone says there's no such thing as an average European price.

Another item, the tariff. Why? If we are indeed acting on a mutually beneficial, parity basis, then why not lay it down in another paragraph, if we are switching to a maximum price effective this year, then stipulate the maximum price. Is there a department, verify or not verify, a maximum rate at the kind of price that's being imposed on us, and no one knows what this price is. Is this the price that's in effect in the consumer nation or is this the price that's in effect at some national border? My understanding is, that's the price that's in effect in the consumer nation. If so, match this price with the average transit rates effective in such countries. With prices like that, the average transit rates, if I'm not mistaken, there's none that would be less than from 2.5 to 4, and so on.

[A comment] from the attendees.

I. V. VASYUNYK: Let's write it there, we'll throw a "sop" to the Russian Federation. Because, under this agreement, we act as donors not only for the Russian Federation, but for the European Union, too, because we're under pressure.

But the most important thing is, let me tell you again, I don't understand this approach. If some kind of principles of average price formation and establishment were set up, even if it's a maximum price for this year, and a transit rate that's tied to it, then we wouldn't need a discounted price for buying out gas in the first place.

What purpose do these "sops" serve? Honestly, I don't understand, we've been fed with these "sops" for all these years. A simple question: implementation of the guidelines will result in the execution of a long-term agreement which will resolve, will enable us to understand the prices? However, under this agreement, we can't even understand the prices in the 2nd, 3rd, and 4th quarters.

By and large, how can we come up with an average annual price estimate, an average weighted annual price, if the way things work is whoever feels bold enough, comes up with an estimate, if we haven't got it here. So everyone says, in principle, we can't tell at this point in time what prices will look like in the 2nd, 3rd, and 4th quarters. Or maybe there's something I don't know? But I just can't understand either these guidelines or the agreement.

O. V. TURCHINOV: Please.

H. M. NEMIRYA: Excuse me, but in 10 minutes we're going to have a discussion first with the Prime Minister of Bulgaria and then of Slovakia.

I would like to tell my esteemed colleagues that, starting from the time gas supplies to Ukraine, and then gas supplies for transit through Ukraine to the EU, were suspended, and long before that, on the Prime Minister's instructions, we had considered all reasonable potential alternatives. We also know, and you can confirm it, that in many instances this amounts to confidential information which prohibits any parties having a contract with Gazprom from disclosing it to any third party, as it could only be disclosed subject to mutual consent. We have put together data and parameters that make us confident that the compromise we're currently working on will be in the best national interests of Ukraine. Let me explain why.

First of all, I'd like to point out that if the guidelines require that we come up with an effectively finished agreement, that's just unrealistic. The guidelines set up parameters rather than offer a finished version. The negotiations between NAK Naftogaz and Gazprom are still underway and coming to an end.

Secondly, the two Prime Ministers signed a Memorandum on October 2, 2008—seven paragraphs, two of them are key. The first one says, no intermediaries, switch to direct contracts. The second, a gradual, structured conversion to economically sound international gas prices and transit for a period of three years.

We have seen that afterwards this situation has changed, for various reasons—one of them being the realization by the Russian Federation government of the actual extent of the world financial crisis, including for Gazprom. So it is not surprising that we have to hear claims that the Memorandum is no longer in effect, that it's null and void, that it's no longer enforceable.

In a situation like that, I believe every responsible politician, including the Prime Minister, being aware that the best interests of the nation are to be given top priority, must seek a compromise. What are the current limits of such a compromise, from my point of view, which was the subject of the discussions held the day before yesterday?

First of all, a very important, key situation continues—a situation that in point of fact allows Ukraine to get closer to the object of our aspirations, European integration, with a nontransparent, shadow middleman removed. Mr. Volodymyr, you can throw up your hands if you want but, for your information, the Government of Poland is currently conducting negotiations with Gazprom on elimination of RosUkrEnergo, with which it has a contract, and it's also very important that this information be known. If you don't know it already, you should know that the Government of Germany and a representative of Gazprom Germania production association demand and insist that RosUkrEnergo get out and be gone from central Germany—and this should be disclosed, this shouldn't be kept under wraps, because RosUkrEnergo is not just a problem faced by Ukraine—it's a problem faced by entire Europe.

Secondly, a compromise to replace the 3-year transition period for these world prices—now we have one year only. Yes, we will lose here. It was expected that it will be 3 years—it is just 2009 now. Instead of transitioning to these prices effective 2012, in a gradual and structured manner, as it was expected in the first place—and I'm not going to analyze the reasons why we failed to do so in time—we have only one year now; in other words, we have missed the timeframe and have just a 1-year transition period instead of 3 years. What is the real meaning of this transitioning? This price of 450, and in some other instances, in Poland it's 500, and in Germany it was 520 at the end of the 4th quarter, less 20%. This less 20% is just the compromise that allows us to regard the year 2009 as the year of transition.

Where do we lose? The Memorandum specified that the transition to gas prices and gas tariffs would be structured. Our concession at this point in time is that we keep the 1.7 in 2009 just as it was in 2008. The parties will have to come up with a formula this year, and we have applied to the European Commission now for expert assistance that would allow us, given the fact that Ukraine is a member of the Energy Charter, to work out a formula that would take effect as of January 1, 2010 with respect to transit rates.

Now to the question of whether or not the current formula provides for quarterly adjustments? Yes, it does—it does provide for quarterly adjustments. I can tell you that the 9-month delay, which is 6 months in some countries, but in most of the countries, including Bulgaria that we've communicated with, and Slovakia, too, the delay is 9 months. In some specific instances adjustments are made not even on a quarterly basis, but on a monthly basis, depending on crude oil prices and prices of crude oil derivatives, and there's also the question of taking into account nuclear energy and coal, so the formula is complicated enough. However, Mr. Vitaliy Hayduk certainly knows how these formulas work.

Thus, I would like for us to make no changes to the current negotiators, but rather offer an opportunity to the head of the government to conclude these negotiations so that she could talk with President Barroso and Prime Minister Putin today. A dynamic diplomacy is currently underway. And, bearing in mind references to a "stab in the back" that we've heard here today, I urge my colleagues not to do so.

I. V. VASYUNYK: Why do we keep passing judgments all the time? How did we acquire this annoying habit? You ask someone to a wedding 30 minutes before it starts, and should anyone make a statement or ask a question, that's described as a "stab in the back." How can you possibly pass a judgment like that?

V. S. OHRYZKO: Please explain a simple truth to me. Let's go without these things that you have talked so eloquently about. By the way, I have no relation whatsoever to RosUkrEnergo—that's just for you to know, among other things. Look, we've had year 2008 today, and we've had the gas price of 179.5 per thousand cubic meters with a transit rate of 1.7. Now let's look at 2009. What do we have? How much do we have? Effectively 450? In reality, however, if we trust all these calculations, let's suppose it's 240, 235, 250, and so on, at best, with a transit rate of 1.7. What do we gain? We have made a giant step forward in order to raise the price by $60 to $90 and tell everyone that we've won? That's a fantastic kind of victory then.

H. M. NEMIRYA: As a diplomat, you have to read all international press publications. It is no secret to anyone that one of the reasons—perhaps a key reason—why we're talking about a one-year period instead of a 3-year transition period, lies with significant political and foreign policy considerations linked to the events of the summer of this year, and the position taken, among others, by the government agency that you represent. Should we talk about that, to make this kind of unqualified comparisons? True? True.

[A comment] from the attendees.

V. M. PYNZENYK: I'd like to share some of my thoughts regarding the guidelines. Even the information we've heard here and the draft document, all point to the fact that not a single price formula for 2009 exists. That's a political price, because the formula means that various constituent factors are taken into account, including fuel oil, gas oil, coal, or nuclear energy. Also, a certain period is considered, and each country applies different formula elements, whether it's a six-month, or a one-month, or a nine-month period. What does it mean? Who can tell we won't be offered a two-year period, when prices peak out in general? In other words, I understand no formula calculation is applied—all they did was take the components and approve them, then take a period and approve it, and then count up the price. However, if we want to attain a world price level, a European price level, we have to come up with a final transit level automatically. One just can't be taken away from the other. Then the parties, if they really intend to offer discounts to one another, the discounts are pretty easy to implement. They should be based not just on a percentage ratio, but rather on the ratio of gas import volumes and gas transit volumes. Because we transit 110 billion cubic meters and buy, I'm not sure about the exact amount, 40 billion cubic meters of gas. Then the savings achieved with respect to a single element should be multiplied by 110 billion and the length of the transit, with adequate savings in terms of gas prices. In this case I believe the parties may be considered to have offered a discount to one another.

Sorry, Oleksiy Yuriyovych, may I say something? I haven't spoken yet, Oleksiy Yuriyovych—may I say something?

O. Yu. KUCHERENKO: That's the third time you've spoken. What do you propose?

V. M. PYNZENYK: I propose that we surrender. Oleksiy Yuriyovych, I didn't interrupt—esteemed colleagues, we're talking about our citizens' pocket. And, excuse me, if the transit rate is identified correctly, the world gas price, correct, then please, the world price or the relevant transit

price. But then we subtract from the border, from the European price, the transit rate that applies to Ukrainian territory, and that's a pretty substantial amount.

Further, the language of the guidelines includes no norms as to the fair, yes, that's the correct components of the transit rate, only what will it end up with in 2010, at least, if it comes to a discussion? It will end up with a very simple discussion: who will determine the fair market value of the gas transportation system—the Ukrainian side or the Russian side? And we'll get stuck in lengthy negotiations again.

And the last thing I wanted to tell. Oleksandr Valentynovych, if we buy 10 billion at 160, and 140 [sic] at 360, then the average price will be 320. You multiply 10 by 160, plus 360 multiplied by 40, and divide by 50 billion cubic meters—that's 320. With the gas price of 320, the actual cost of transit is 1.6. Just divide it. 6.4 will be used for the transit, a transit leg is 11.5 sections, with an average of 1150 km, and 110 billion cubic meters.

Dear friends, I understand any party pursues its interests, but our interests must come first. And, unfortunately, you won't be able to find it in the guidelines, that it is reviewed on a quarterly basis, according to the formula. That's no details. Unfortunately, these details are of crucial importance for the country, for our national economy, and for every individual.

O. Yu. KUCHERENKO: We are grown-up people. I'm under the impression that we don't understand what's going on today. My understanding is this, we are in a very bad situation. Just how we have all together ended up in a situation like that, that's a different question. But I think there are two main reasons: that's the ill-fated events of 2005, when a very patriotically inclined individual, in charge of NAK Naftogaz of Ukraine at the time, made certain decisions that set the whole thing off. And secondly, the fact that the negotiations with the Russian Federation were conducted, unfortunately, from two sides. I can tell you based on my own experience: if a certain process is controlled from two points simultaneously, the process is doomed. Some of you may have a different point of view, though.

It may very well be that the document in question is not an excellent one, and we could bicker over its formulations. It is quite obvious, though, that this attempt is of political nature in the current situation, taking into account the aspirations of the Kremlin leaders, and it is they, not we, who call the tune in these negotiations, my dear friends, so if we want to play around for another three weeks, let's play around. And then I can tell you this joke about who stood on the stool and who did what afterwards.

For this reason, this is a certain political solution, so that we could help them save their face and offer some price to our industry and to our businesses—a price that would be more or less acceptable. It is clear, however, that this is going to be a very rough year and that, unfortunately, we will be able to, must be able to do in just one year what we will no longer have three years to do. If you see any other way out, let's put it to a vote: perhaps, we should send Viktor Mykhaylovych to join the negotiations and let him participate. Twenty-six people still want to join these negotiations now?

My main argument is this: we have our Prime Minister—we all understand, and I don't want to say anything, I don't want any accusations, who did what against whom—that's it, she assumes the responsibility in this situation. As a matter of fact, it is a life or death decision for her in this situation, this agreement. So let us be realistic. Let us be human. Do we want to help or don't we?

That's why I have this proposition: either we make decisions or act formally. And I think the Prime Minister will use her good sense over there. We have a government minister, we have the head of NAK Naftogaz, so we'll have a suitable contract. Thank you.

O. V. TURCHINOV: Is there anyone else who would like to take the floor? Please, Volodymyr Mykolayovych.

V. M. SHANDRA: In fact, I have another question. We are saying that the transit will be average European, or something like that, starting from 2010. However, it is expressly written here that whatever the formula components might be will be specific for Ukraine only, as far as I can see. And all the operating expenses related to the transit, the full cost of the fuel gas, the amortization of the gas transportation system currently in use, the fair market value of the gas transportation system, and the cost of capital have all been calculated based on the effective rate of NAK Naftogaz capital cost.

Have you ever estimated how much it will be when all's said and done? Perhaps, it will be 1.5? Frankly, I don't know. There's no mention here that this kind of transit will kick in in 2010.

[A comment] from the attendees.

V. M. SHANDRA: The transit. Just go ahead and read it. That's why I have a proposition. As a matter of fact, I'm here, so let me finish with the point I'm trying to make, and I'd like us to—thank God we're talking without the press or our assistants here. We have been invited—and we could do without this invitation, if this matter is given this kind of treatment—perhaps we shouldn't have been invited at all, so that we wouldn't be sitting here and squabbling.

Whoever was a member of the government back in 2006 must remember the kind of battles we had here—yes, real battles, very fierce. Viktor Mykhaylovych here must remember, and Yuriy Vitaliyovych, too—let them tell you, very, very fierce. If you believe we've just asked you a question, that we're "stabbing" you in the back, as someone here has put it, then we shouldn't have been invited at all. We trust our Prime Minister, and this is quite normal. There is a government minister, there is the Prime Minister, so let them make the decisions there. Why not?

If you have invited us here for a discussion, then let us ask a question and listen to the answers. I absolutely agree, Oleksandr Valentynovych, don't answer yourself—ask a deputy director of NAK Naftogaz and let him answer, or ask a Deputy Minister of Fuel and Energy and let him answer the questions I'm asking.

Another question: if everything is indeed the way you tell us, I can see discrepancies between this specific document and what you are telling us will happen. For this reason, I propose that we incorporate what you're telling us in the guidelines here. If this makes the process even more complicated, it doesn't matter because the negotiations are going on there anyhow—I understand why these guidelines have been drafted. Let it be a full authority of the Prime Minister. I agree with Yuriy Ivanovych, with any government minister, that no one will leave this room and no one will "stab" anyone in the back or speak publicly—I won't do that myself. However, if we're working here in this meeting, let's make a few points clear. If something could be added to it, then these two paragraphs have been written poorly. Let us rectify them here or else give instructions that they be rectified and rewritten properly. Thank you.

[UNOFFICIAL TRANSLATION]

Yu. V. LUTSENKO: I suggest that we review the last paragraph on the first page, which reads as follows: "When executing a contract, the purchasing terms shall be complied with," I'm leaving out a lot of superfluous language, "from the agreed-to base gas price level, etc., 450 for the 1st quarter of the current year, to be adjusted on a quarterly basis." Under such terms, I don't see any problem voting for this thing on the whole. In this case, all the calculations referred to by Oleksandr Valentynovych match, and the gas price... plus this gas price will give us a very favorable price. In view of the inevitable downward adjustment of the gas price in the 2nd, 3rd, and so on quarters, this too will result in a very good price—at any rate, the kind of price that can be negotiated right now. I don't want to act as a political factor for this whole thing—let me just say this: I believe the head of the government made a serious mistake when she failed, on December 31, to hold responsible for the gas negotiations and the final gas price those individuals who actually attempted to take control of the process—specifically, the President and the Secretariat of the President, who took everything in their own hands and let us face the music now.

Let me say it again: if we incorporate this approach in the guidelines in an acceptable form, that the price is in fact the 1st quarter price to be further adjusted on a quarterly basis, I believe we will be able to both save our face and come out of this situation with a price that would be acceptable for continued running of the Ukrainian economy.

V. S. KUYBIDA: Negotiations always seek a compromise, while the guidelines we are working on represent a limit, a kind of a framework within which such compromise should be sought after. In this regards, I find attractive the proposition put forward by Vice Prime Minister Vasyunyk according to which, if they offer us a 20% discount from the base gas price level, then it might be worthwhile if we set forth in another paragraph that we are also offering them a discount in 2009, down from the actual price of the gas transit, say at 20%, or 50%, or as much as 70%, so that we come up with $1.7 for a thousand cubic meters in the end; it is important, however, that we have the transit price fixed, so as soon as it comes up, this transit price, at $11 or at $3, this would mean that they have recognized that such transit price exists—so I think it's important, and I find it logical that it makes sense to support this.

O. V. TURCHINOV: Another question: what should we do with item 3?

V. S. KUYBIDA: It's coming next. Next point.

O. V. TURCHINOV: So go ahead and say it right away, because you say 20% here, 20% there—but what about item 3, what should we do about it? Don't we need it? What they are offering in fact is a 2.5-billion gift to Ukraine, so we'll use this 2.5 billion, you see, for which they offer a discount at 10 billion cubic meters of gas each, to subsidize the transit, and that's the entire formula for you, you understand?

V. S. KUYBIDA: But we, too, are formally offering them a gift.

O. V. TURCHINOV: Transit doesn't cost so much...

V. S. KUYBIDA: Because in reality, no—however, formally we are fixing it, and this will benefit us politically. As for item two, I think along the same lines as Yuriy Vitaliyovych. Taking into consideration that we have to buy an additional 40 billion, incidentally, we didn't specify in item two what volume we're buying, and this could be used as an excuse for continuing the negotiations, because they are going to say, "We are selling you 30 or 20." Because you haven't specified it. So we need to specify the volume and break it up by quarter by setting up certain limits. By stating that the price will be adjusted on a quarterly basis. Unless we stipulate, unless we provide for price adjustment, in its present form it means that the $450 covers the entire 2009. So it will be very difficult for us to move away from it.

Also, about the statement made by the Minister of Finance. It is obvious who will be determining the actual market value and how. This too should be spelled out or identified somehow, otherwise the negotiations will last forever and lead nowhere. They will keep saying one thing, we another. So it would benefit us if we make it clear.

Y. V. VINSKY: I just want to cite a few figures that I have multiplied. 170 times 5 equals 900 hryvnas. 320 times 10 equals 3200. In other words, in reality we're talking about raising the price more than threefold for our consumer. It's not just a hundred percent—it's threefold. That's the price of this issue. If we take 3000, 40 million becomes 120 billion. That's a third, no, 40% of the allocated budget. Right?

V. M. PYNZENYK: That's the entire national budget.

Y. V. VINSKY: The entire national budget. That's the price of this issue. In other words, the point is that it is not we who are paying—it is the general public that is paying for these things. I can say my political position has always been that we should have taken up the European approaches 5 or 6 years ago to both the transit and... Unfortunately, our predecessors failed to apply it in a proper way in due course, so we are facing a problem at the present time. We have allowed the public to develop this "freeloading" attitude—our people are used to wasting the heat for free. Now, without a doubt, our government will have to pay up for this thing, it goes without saying that we will be held politically accountable for this decision. And we won't be able to make it clear to anyone that Yanukovych's team was just sitting around, doing nothing and waiting for God knows what... However, let me say it again that it is the general public who is going to pay for our decisions. A very serious price. I don't even know what price.

Before this meeting began, I talked with Volodymyr Stanislavovych: the manufacturing sector won't be able to afford this amount.

O. V. TURCHINOV: Your proposition, Yosyp Vikentiyovych.

Y. V. VINSKY: For this reason, I would like to stop this finger-pointing because the situation is really grave.

O. V. TURCHINOV: So the proposition is to decrease the rate—is my understanding correct?

Y. V. VINSKY: My proposition is this. I want to ask a question: Are we still in a position to continue with our negotiations any further, or aren't we? Because I'm not on top of this issue. If we could continue with our negotiations and seek some concessions from Russia, at any rate, we could at least explain to the public that we have taken on the European mechanism, here and there—we'll have at least something to say. With the current mechanism, you see, this is a lose–lose situation: economically—for the country and politically—for the government, and frankly, I'm not sure that Yulia Volodymyrivna will in fact sign this draft at all. Do we have any wiggle room left with respect to this document or don't we?

O. V. TURCHINOV: Tell us what you propose.

Y. V. VINSKY: I want to ask, what kind of a proposition? If we have some wiggle room left, then we need to go ahead with our work; if we don't have any wiggle room left, then we must understand that we are putting ourselves in the ground.

O. V. TURCHINOV: Understood. We need some wiggle room. Let's move forward then.

V. S. NOVYTSKY: Esteemed colleagues, unfortunately, it is not July now and this not a conference on developing approaches to a supply system. It is the middle of winter now, and it's freezing, so the circumstances in which these negotiations are taking place at this time are very complex, of course, so if anyone hopes that the Russians will be willing, under the circumstances, to seek any further ways of supporting our position, or our economy, that's nothing but wishful thinking, of course. We can say that, to a large extent, we have to blame ourselves for ending up in a situation like that, so we need to find a way out.

The prices which are currently in effect in foreign markets, they are, of course, for our products and, let's say, what we will get will put our chemical industry, our sales, in a tight spot. However, the foreign markets for our chemical products appear to be down now, hardly moving at all. This seems to be the right time for us to try and do something, so to say, with minimal losses, because otherwise we would have to slow down our production operations at this time. However, as the market situation picks up and improves further down the road, we will need to expand our production capacity.

By all appearances, as natural gas prices inevitably grow to reach the world price level at some point, Ukraine, as an ammonia exporter, will be basically unable to continue being one. It's just unreal. We won't be able to compete in the market. As for processed products, I mean carbamides and ammonia nitrate—this is just to name the most important prices, so to say. I believe that the metallurgical industry will hold out, should the current trends remain in place, but as for the others, where the volumes are not so large, they just don't matter as much.

But basically, with the current conditions, I'm afraid that we, shall we say—about the terms that we may have to face. And the terms are that if we continue to operate in this mode, the lower the pressure will be in the East, where businesses just can't withstand it, the worse the general situation will be.

That's why I believe that we must, let's say, I understand it's very complicated—we must finish with this negotiation business and come up with a formula, with some terms that will enable us to

operate in the future just as everyone else operates, and we should realize that this is the only position that we can take. It just can't continue like this any further.

I think the most suitable proposition, if something like this is indeed feasible at this time, would be the one made by Yuriy Vitaliyovych, if it will indeed be subject to adjustment, because this is what's written here, not very clearly to be seen, that if price adjustment are made on a quarterly basis during this year, beginning from the second quarter, then I believe we have no other option but support this and...

O. V. TURCHINOV: Please go ahead, Ivan Oleksandrovych, and let's draw a line under this discussion.

I. O. VAKARCHUK: Esteemed colleagues, I have a question: if we have 40, what we need, the 450 price, multiplied by 20%, equals 1.7, multiplied by all this, don't we have a compensation, is there any difference? Does anyone have any figures, whether we're going to lose or win?

And another thing: my understanding is that we have to deal with Russia's *diktat* and nothing else—there are no negotiations.

[A comment] from the attendees.

O. V. TURCHINOV: Colleagues, if you could let me take the floor, I will comment on both your remarks and my own position.

I. O. VAKARCHUK: We need a full picture—because we keep proposing something from all sides, [but we have no] full picture to make any decisions. I don't have a full picture. Various items here deal with things that can't possibly be put together. We need to sit down and do our math. I can't imagine why we would need a document that is put into words so incomprehensibly. Thank you.

O. V. TURCHINOV: Vitaliy Anatoliyovych, just a few words please.

V. A. HAYDUK: Esteemed colleagues, let me try and explain the situation so that you have a better understanding to make your decisions.

First of all, the gas sales market and the transit market are two totally different markets that operate according to totally different rules. If the price can go up or down in one of these markets, namely, the gas market, the transit market remains practically unchanged as a rule. Transit prices are subject to change only on account of inflation or wages adjustment, and they remain [unchanged], are determined in accordance with the rules set forth in the Charter and are more stable. This doesn't mean, however, that if we think we could set a transit rate freely that would compensate for our losses from gas purchases—this is not going to happen, not really, because it's two different markets. First of all, can we, could we come up at the current negotiations with a discussion of transit changes in response to the demand for gas price changes? Unfortunately, we couldn't, because our market was tied, the gas market was determined by the transit market, but in 2006 we broke up this tie and said that the gas supply price would be separate from the transit price. So 2006 saw the signing of

Mr Voronin's addendum to the contract of gas transit that had a set rate of 1.6 until 2010 and for 2010 inclusive. In 2007 this addendum was duplicated.

Indeed, it does not correspond with the essence of the contract where the markets are linked. But international practice says that if the addendum does not correspond to the essence of the contract, and you have worked with the contract for 3 years already, the contract is effective no matter what Ukrainian court do to annul these addendums, in Stockholm a court fiasco is waiting for us. Therefore now we do not have an opportunity to link these two markets. No matter if we want it or not, in 2009 we must work with the old transit rate, so that from 2009 to define it with a formula of direct transit.

In relation to what is written here: It is hard for you to read, as you are less familiar with this, but it is written quite clearly. First – as of this year we would have a formula approach. Second – the main digit in the formula is 'P' zero, a so-called base rate for gas, where it is defined as 450 with a discount in 2009 of 20%. The formula in the contract without a doubt will change with requirements of 9 or 6 months, which should be a subject of the negotiations which are currently held in Moscow. I think that the common practice of 9 months, which is used by the majority of countries in Europe, should be adopted.

The formula should not be linked to coal, atomic fuel etc. Why? Because in countries where gas is bought to produce electric energy, the majority of electric energy is produced at atomic stations so replacement is compared with such markets. Ukraine does not buy gas for the production of electric energy. The 30 billion of gas used by the population is for heating which is directly linked to residuum and gas oil. Thus we do not have a market where a formula should include coal or atomic energy and we cannot do this. Therefore, the formula written in the directives is linked to residuum and gas oil.

Yuriy Vitaliyovych, 'P' zero is not defined for quarter 1, it would be P zero 450 with a 20% discount and will be effective throughout the year, with each quarter being modified depending on changes in the prices for residuum and gas oil over 9 months, comparing quarter 1 and quarter 2 of 2009, 6 months of 2008, how prices have changed. If it will increase, the amount will be increased, if it has decreased, 'P' zero will be changed.

[A comment] from the attendees.

V. A. HAYDUK: It is subject to amendments, that is how the formula works. Not a single country has monthly amendments, because it can be written in the formula. Could you please tell me, how would it be possible to work in a country where the price changed every month? It would be necessary to recalculate all of TeploKomunEnergo's bills. Nobody would do that. Every country uses a quarter so that there is an opportunity to implement all the procedures inside the country.

[A comment] from the attendees.

O. V. TURCHINOV: It will be adjusted.

H. M. NEMIRYA: Esteemed colleagues, the discussion with the Prime Minister of Bulgaria whom we asked earlier to provide some information appears very much to the point right now. First of all, he asked to extend his thanks to the Prime Minister for her constructive conduct at a time that is crucial for all.

Secondly, the information. In the year 2006, which was mentioned here before, as you recall, a few more countries found themselves in a similar situation, in particular as Gazprom was putting a lot of pressure on Bulgaria at the time. Just like Ukraine, Bulgaria had long-term contracts signed by that time—they had three contracts that were in effect, 1997, 1998, and 1999, and the term of these contracts expires in 2010. However, when Gazprom applied pressure and a solution was proposed on all sides in the vein of our unique RosUkrEnergo, the Bulgarians said no. The 2006 discussions went on for 9 months until the parties finally reached the same agreement in 2006 as the Russian and Ukrainian Prime Ministers reached much later in 2008. The Bulgarians agreed to a 4-year transition period of replacement, and their price was formed by two thirds based on a formula and by one third based on bartering the gas price for physical gas as such. At this point in time, they are synchronizing these things and are about to use the price approach, the formula is already in effect, but they had reserve capacities with respect to price parameters just because of the fact that their transition period began in 2006 for them and lasted 4 years as opposed to just 1 year for us. This is just for your information.

V. S. OHRYZKO: We were talking about state secrets here. When Prime Minister Topolánek [of the Czech Republic] was here on a visit, he was received by the President, the Prime Minister, and a few other officials, and they also discussed the 1st quarter and the price back then. So the Czechs cited—unofficially, of course—$280 per thousand cubic meters of gas for the 1st quarter for the Czech Republic. Where does the 450 come from? This is just unbelievable.

H. M. NEMIRYA: I'm going to talk to Topolánek pretty soon so, specifically on your account will...

O. V. TURCHINOV: Esteemed colleagues, let us sum it up now—I will try to do it in a level-headed manner. You know, the reason I didn't start with a political briefing was because I thought that you watch TV and read newspapers, at any rate, or use the Internet; however, the discussion that we have had so far attests to the fact that we have an inadequate perception of what's going on in the country. Let me brief you then that Ukraine has not obtained a single milligram of gas as of January 1 of this year—not a single one. That's number one.

Number two: Ukraine has never purloined any gas—nor have we ever obtained a single cubic meter of gas by unauthorized siphoning. That's number two.

Position number three, esteemed colleagues, is about our assumptions for the negotiations. In case someone doesn't know, Russia holds a monopoly on natural gas supplies to Ukraine. In other words, no other gas pipeline exists that runs to Ukraine. So when we're talking about bank loans, one bank, another bank, tenth bank, or about adjusting any terms, there is no competition here. By the way, Petro Mykolayovych, please make sure that the agenda for the next meeting of the Cabinet of Ministers includes a report by the Minister of Finance on entering into contracts beneficial to Ukraine

for engaging foreign lenders on terms that would benefit Ukraine, of course, in 2008 and 2009. There is competition there and we can work there—it's only inaptitude that prevents us from achieving any results. Unfortunately, in this field, however, there is no competition at all, esteemed colleagues.

Next assumption for the negotiations. It's a pity Yuriy Ivanovych has left, but in 2006, esteemed colleagues (and I won't mention whose political leadership we owe it to—you can guess it yourselves), some addenda to the agreement were executed that specified a fixed price. Ivan Oleksandrovych said that it would be desirable to provide for 20% more, up to 40%. Ivan Oleksandrovych, we have $1.6 fixed until the end of the next year, fixed until 2010 for Gazprom, and for 30 years for RosUkrEnergo. Do you understand? Thirty years for RosUkrEnergo and until 2010 inclusively for Gazprom. In other words, the price is 1.6, and we have revoked it in a court of Ukrainian jurisdiction.

As a result, the Russian side insists at the negotiations at this point in time that all disputes with respect to this agreement be resolved exclusively in the Russian Federation and point to the precedent that we have created by terminating the agreement in Ukraine. Obviously, we can't agree to this. However, this is just in response to the arguments that we are tough guys and our transit must be tied to the cost of gas.

Yes, it must indeed be tied; however, we are under a contract signed by officials who are free and find it easy to talk on airwaves and teach us how we should live (take Voronin, for instance, and others). 1.6. So every time the question of increasing prices is raised, Gazprom says, "We are under contract, so shall we go to court in Stockholm or in Ukraine or in the Russian Federation, perhaps? Make your choice."

For this reason, again, esteemed colleagues, this is another assumption for the negotiations.

Next question. You can't even imagine the kind of pressure applied to our nation by the EU: resume transit immediately, on any terms, immediately. We have been holding on—you can see for yourselves for how long. What is our problem here? As soon as we allow transit to Europe, you see, we lose our last argument. Period. You can set the gas price at $700, or at $1000, or even at $2000, as much as you want. So that's another assumption: how much time do we have on hand? No time at all. The President promised last week to resume gas supplies to Europe. We are not letting him do it, because if this is the case, we will have no arguments left at all for any further discussions with the Russians.

And the last assumption for the negotiations. The Ukrainian manufacturing is strained to the limit. The pressure in the network is much lower than required from the engineering point of view. We can hardly offtake enough gas from storage to keep our industry running and at the same time avoid shutting down heating systems in populated areas. If we are hit by another freezing wave, we can't forecast the kind of emergency situation we can expect in our gas transportation system. This would mean a total collapse. Question: who is going to estimate a collapse like that? How much will it cost us, how much will it cost for the budget everyone has been talking about here? How much will it cost for the entire country, for the stability of our nation during the winter season, when we have our cars running and honking thanks to our intellectual endeavors? But this is just the tip of the iceberg, compared to what can actually happen.

With this in mind, esteemed colleagues, when Yosyp Vikentiyovych asks if there is any wiggle room left, I can tell you we have none—we ran out of wiggle room on January 7, and on the 7th we

had no wiggle room left at all. At this time, we have reached a point where we are trying to reduce the national GDP artificially, by supplying smaller volumes of gas than we are required to supply.

Last but not least, esteemed colleagues. This is just for your information. Basically, the guidelines don't have to be approved by the Cabinet of Ministers of Ukraine for the agreement to be signed.

First of all, when negotiations are conducted by the Ukrainian Prime Minister herself, she is in a position to make her own decisions under law and according to existing procedures.

Secondly, the Ukrainian Prime Minister herself may approve the guidelines according to the Rules.

There was a single problem, a real problem that made me convene this meeting of the Cabinet of Ministers. The reason is that, under the pressure applied by RosUkrEnergo—and Gazprom is going to take the gas away from them—they want to indicate the price not as 1.6, but first 3, then 2.5, then 2.2, and so on. In other words, to put them in a better position to negotiate, we just had to make sure that the government accepted the position of no more than 1.6 billion—that's a tough stand to be taken by the government. Then we would find it easier to say, look, the government has approved it, so we can't shift either right or left, because we're talking not about the guidelines, but about specific resolutions that will be laid down in the executed agreements. For this reason, frankly, my dear friends, I am surprised by the discussion we have just had. Perhaps it was indeed the lack of information—perhaps a vacation—that prevented you from watching television, but there may be some other motives or positions involved, too.

For this reason, I don't think it will be necessary to adopt the guidelines now. Thank you for your assistance in conducting the negotiations, and I'm taking this issue off the agenda now. Good-bye.

Appendix 10

Cabinet of Ministers Order (Jan. 19, 2009)

[UNOFFICIAL TRANSLATION]

CABINET OF MINISTERS OF UKRAINE

ORDER

dated ____ January, 2009, No. ____

Re: NAK Naftogaz Ukrainy
[Oil and Gas of Ukraine, National Joint Stock Company]
Foreign Economic Activities

The Directives for the delegation of NAK Naftogaz Ukrainy [Oil and Gas of Ukraine, National Joint Stock Company] in negotiations with OAO Gazprom [Gazprom, Open Joint Stock Company] to sign the Natural Gas Purchase and Sale Contract for 2009–2019 and the Contract for Volume and Terms of Natural Gas Transit via the Territory of Ukraine for the Period of 2009–2019 (added to the original) are hereby approved.

Prime Minister of Ukraine **Yu. TYMOSHENKO**

Appendix 11

Cabinet of Ministers Transcript (Jan. 21, 2009)

[UNOFFICIAL TRANSLATION]

TRANSCRIPT

Of the session of the Cabinet of Ministers of Ukraine

Dated 21st of January 2009

Y.V. TYMOSHENKO – Dear colleagues, I would like to start this Government session with the discussion on natural gas issue as it is quite urgent today. And I would like to report in some detail on the events that took place and what actually we managed to get from Russia for Ukraine in terms of the contracts signed.

First of all, I would like to draw your attention to the fact that yesterday European Commissioner Mr. Piebalgs was in Ukraine. On behalf of the European Union he is taking care first-hand of all the issues related to the termination of the gas crisis. Yesterday he quite clearly stated that the European Commission and the European Union do not have a single document confirming unauthorized gas withdrawal by Ukraine as of the 1st of January. Also, the EU and the European Commission do not possess documents confirming that Ukraine turned the gas off for Europe. I am of opinion that this is exactly the case when the truth is ascertained and Ukraine got back its good and honest name of the transit country for the Russian gas to Europe.

I wish Ukraine would be proud of its achievements, restoration of its honest name as opposed to blaming each other in Ukraine as it always happens at the very unpleasant level.

Secondly, I would like to clearly state that it was confirmed – including confirmation at the level of Gazprom management – that the breakdown of negotiations on the 30th – 31st of December was caused by RosUkrEnergo namely via Ukrainian politicians and top officials. When Ukraine was discussing gas price at 235-250 for Ukraine for 2009, RosUkrEnergo offered price of 285 and, besides that, all the destructive work was done for this purpose. So, it was Ukrainian corruption at the highest political level with the participation of RosUkrEnergo that ruined the negotiations on the 30th-31 of December per se. And all that finished in a massive unpleasant scandal that reached the EU. Unfortunately, this is the reality of today.

Next. Nevertheless, Ukraine and its Government in particular, managed to get through this difficult crisis, and get through on the terms that were a real victory for Ukraine. I point it out and say so because I know well on what terms all the other countries cooperating with the Russian Federation are getting their gas. And now I would like to state the results achieved.

First of all, starting from the 1st of January 2009 Ukraine switched to the formula approach for the gas price determination and for the determination of the gas transit rates for transiting Russian gas to EU by Ukraine. This means that Ukraine achieved an absolutely new level of political and energy independence and for the coming 10 years there will be no confrontations, no aggravations at the year end when signing the contracts. Besides, these formulas both for the transit and gas price determination are the formulas that are fully in effect for the EU, there is nothing in particular that could worsen or improve the situation; they are standard formulas and Ukraine will get along according to these formulas.

At the same time, for Ukraine to have a certain transition period and for all of us to have a chance to have some time lag to work on energy efficiency issues, to work on all the technical aspects related to the minimization of the natural gas usage, increase of the extraction of the Ukrainian natural gas – we all got year 2009, one more year of the preferential price formation.

And in spite of the fact that the formula stipulates for the quarterly price formation, Ukraine will have average price of $228.8 per annum per thousand cubic meters that will be established starting the 1st of January 2009 for all the Russian gas consumers in Ukraine.

As far as the price is concerned, I would like you to have a look at this table. Together with my colleagues -Prime Ministers of other countries - we found out average annual prices that will be in use for other countries. The only country I cannot see here is Poland. Will you, please?

Voice from the auditorium: Poland is on the next slide.

Yu.V. TYMOSHENKO: Please, have a look; please, bring back the previous slide. You can see average prices and can clearly imagine that 228.8 is the lowest price among the countries you can see now.

Besides, I would like to state that our analysts conclude that Ukraine received the lowest price except Belorussia for the Russian gas amongst all the contract partners of Russia. I point it out again – among all the partners, including Moldova - independently of the fact that, as you know, Moldova and Russia jointly own the gas transportation system of Moldova. As you know, Belorussia also gave part of it gas transportation system to Russia and therefore has slightly better contract terms compared to Ukraine. With the exception of Belorussia Ukraine has the best contract terms among Gazprom's gas-consuming partners.

I think it will be very informative for us to have a look at Poland. Show Poland slide, please. Poland is a country that, as you know, follows the same policy as Ukraine, has approximately similar relationship with Russia as Poland has, has industry structure similar to Ukrainian, though it is of no particular concern. It was the Prime Minister of Poland himself who informed me of the quarterly prices and I want you to have a look at it, these do not include VAT, no any other surcharges, this is pure contract price. So, average price for Poland per annum will be $399 for 1,000 cubic meters, price for Ukraine will be 228.8 – by 74.4% lower than the price that Poland will have. It looks about the same for other countries; this average price is more close to the price for Germany because they implement joint investment projects – and the average price per annum for Germany will be 280. For us – 228.8.

I would like to say that this is a unique price for Ukraine, it is a real victory for Ukraine and I wish this country would learn to be happy for its victories instead of berating each other at the time when indeed it was possible to achieve.

A few words about the transit. Indeed, there was a lot said about the transit. I would like to say that back in 2006 – and you know who was running the Government, who was running the country at that time – a five-year transit contract was concluded with Gazprom with the price for transit being 1.6. Remember this figure! This is a contract that had been concluded, this is a contract in force, it had been signed and it states that up to 2010 inclusive the country had to receive the transit price 1.6 for 1 thousand cubic meters per 100 kilometers. If this aggression will continue, we will name those

who were in charge of this process, how it all was signed and what was going on with RosUkrEnergo altogether.

Therefore I would like to ask us all to highly appreciate what Ukraine achieved for this year. What Ukraine did manage to get in terms of transit for this year? We have kept the price of 1.7 and we were able to get technical gas for pumping the Russian gas to Europe; and this is basically all the cost of transit – cost of technical gas. As a matter of fact, there's some (money) left for salaries and some technical needs. We did manage to get the price for the technical gas lower by $25 compared to the previous year to be able to maintain Ukrainian gas transportation system. This means that last year technical gas used for technical issues, technical pumping was $179.5 while the transit price was 1.7; now we got gas for technical pumping at the price of $153.9. I would like to tell you that those who make pumping in Europe, all other European countries who are involved in transit, have the price for technical gas 2.9 times higher compared to the price Ukraine has for 2009. I would like to say that it is not just a victory, it will give us the possibility to modernize and refurbish our gas transportation system and it will give us a possibility to work on energy saving and on all technologies.

I would like to say that these are indeed unique terms for Ukraine and I am very surprised that people who well understand the results achieved today have the nerve to claim that somewhere there the interests of Ukraine had been infringed. I want you to know the details.

Besides, I also draw your attention to the fact that finally we did manage to get rid of all the corruption in the gas sector. You know that in 2008 we did away with UkrGazEnergo that was given all the domestic market of Ukraine and National JSC Naftogaz became essentially nothingness on the verge of bankruptcy; it was when back in 2006 everything was given to RosUkrEnergo and UkrGazEnergo. This year, in 2009, we removed from the market the biggest corruption that was created in the recent few years – RosUkrEnergo. And we have a direct agreement between National JSC Naftogaz of Ukraine and RosUkrEnergo…

Voice from the auditorium

Yu.V. TYMOSHENKO: …and Gazprom. There is a direct agreement between the National JSC Naftogaz of Ukraine and Gazprom without any fly-by-night middlemen. And I would like to point out that there will be no middleman, from no jurisdiction, not located in any cantons; finally we eliminated a big political feeder that was feeding a few powerful political forces, and from which, indeed, the bribes were distributed to all destinations. Now it is stopped. I understand there is some displeasure. I know very well who were the part of those corrupted bribery schemes. And those who were the part of those bribery schemes now express their displeasure with such unfavorable terms for Ukraine, because, indeed – where can they get their bribes from now? At what expense Mr. Firtash will be financing political forces in Ukraine?

This is why we put it to an end. And I would like to say that yesterday the European Commissioner highly appreciated Ukrainian achievements in this negotiation process, highly appreciated transparent terms that have been concluded and economic terms achieved for Ukraine.

Therefore I think that is one of the first issues we are going to consider at the Government session, you will be able to ask all the questions on the agreements signed, you will be able to ask all the questions regarding the details, I will be prepared to provide all the explanations. But I am proud of

Ukraine getting out of the crisis with dignity, getting out as a winner with excellent terms and conditions that at the time of the global financial and economic crisis give our enterprises a hope of maintaining their ability to compete. My thanks to the media.

And now we are proceeding to the Agenda of today's session. I would like to ask representatives of the media to move to the room next door. As the decisions will be made, the Ministers will come out of this room and inform the media.

Dear colleagues, today we will consider a few items of utter importance related to our work and our decisions. First of all we will consider urgent issues of implementation of the monetary policy, its influence on the financial position of the State and ensuring coordination of activities of the Cabinet of Ministers and the National Bank, in particular the issue of refinancing of commercial banks.

Besides, I would also like to listen to the report on compensation of the budget deficit, what negotiations are in the process, what is the progress in the negotiations with those who require early payment of debts from Ukraine. Also, I would like us to defend the national interests of Ukraine in this area as well.

Next item is a report on the work that had been done in 2008 and January 2009 (I put the emphasis on 2008) in respect of state borrowings and servicing of national loans as well as compensations for the budget deficit. I am very keen for us to hear a report on this issue.

The next key issue that we shall consider today together is the issue of obtaining foreign funds for the State Agency of Automobile Roads of Ukraine **(Ukravtodor)** in 2009. And I would like us to discuss this issue here in earnest. Besides, the year 2009, provision of state guarantees for the liabilities of the State Agency of Automobile Roads of Ukraine – these are the draft resolutions that we have to consider.

Besides, dear colleagues, I would like us to proceed to the consideration in this session in succession (and the order will be established in accordance with your applications and by the Secretariat of the Cabinet of Ministers) on the implementation of priorities for 2008, that had been planned for each Ministry. I would like these reports to be public for the Government to know which priorities had been achieved and which had been not achieved; what had we done as the summary for 2008 and what remained just as insignificant talk and cheap politics. I think that we also will consider everything related to investment projects on particular model, the way we agreed. On Thursday next week we will hold additional session of the Government that will be dedicated to the large investment projects reports and removal of all the obstacles, because at the time of economic crisis the most important thing is to open way for all the investments into Ukraine. If we do that we will be able to seriously maintain economic development of Ukraine.

Also, my dear friends, I would like you to know that we still have fundamental problems with the National Bank. The exchange rate is inadequate, speculations are going on and besides, today we are investigating the situation where at the beginning of the year the decision to allocate 3 billion Hryvnas for refinancing Nadra Bank was taken again. No other bank had received anything, but for Nadra Bank such a decision had been made.

I would like to say that it is not corruption any more; it is disregard of the society as such, as a participant of observation of all these activities. You know that this issue has been considered twice

by Verkhovna Rada; twice by almost 400 votes the decision to fire Mr. Stelmach and all the team that was the cause of this situation was made. Later today we will get the confirmation from the State Financial Monitoring Service of Ukraine and if this confirmation will amount to 3 billion, we will call for an extraordinary session of Verkhovna Rada, because it cannot go on like this in this country. To ignore the law, to ignore the country, the society and everything that has to do with the interests of every citizen – it cannot go on like this.

I point it out once again that Hryvna exchange rate of today is artificial, ungrounded, shameful for Ukraine; even now it results in some agencies announcing default of Ukraine - something I warned about. Realistic exchange rate that can give Ukraine a chance to get through the crisis is 6 – 6.5, anything else is an audacious destruction of the country. You have to know that I will not tolerate that, I will not quietly watch this; we will bring the issue of responsibility of the personally responsible officials to its logical end.

I think that you are familiar with all the other drafts of laws and resolutions that we have on the Agenda. I would like to ask you a question. Do you have any amendments or comments to this Agenda?

Yu.F. MELNIK – I would like to ask to include in the Agenda the draft of the resolution On Approval of the List of the Subjects of the State Price Regulation for the Marketing Year 2009/10. The draft had been developed and agreed without remarks. I think it can be approved at the Government session.

Yu. V. TYMOSHENKO – Any comments on including this item in the Agenda? None.

V.M. SHANDRA – I would like to ask to include in the Agenda two procedures regarding salary payments in Chernobyl Nuclear Power Plant and restricted area. We will coordinate this with the Ministry of Finance. In fact, these are salaries.

Yu.V. TYMOSHENKO – I do not think there will be any objections, but as far as the salaries are concerned, I would like to say that I know that a large-scale sabotage of paying salaries to the employees of the state-financed organizations have been started, ranging from the Government to the regions. I would like to ask the State Financial Inspection of Ukraine (SFIU) to formulate an order for SFIU to analyze where and what decisions are taken in respect of salary non-payments. Also, I would like to ask to forbid the Ministry of Finance on record to move the salary payments to the later dates. An absolute panic is rising in the country, the payment was moved by three days and it is on all the TV channels already that they do not pay salaries at the Ministry of Defense.

Voice from the auditorium

Yu. V. TYMOSHENKO – it was arranged this way so as not to pay the salaries. I think that it is purely defamation of the Government, it is done on purpose, there was no reason for it and it is done to create newsbreaks. Therefore I request for the protocol order to the Ministry of Finance to ban movement of salaries payment terms; we will have to delay all the other payments. If additional meeting are required to resolve this issue, we shall convene the meetings and shall take decisions.

Any comments to the Agenda, please?

[UNOFFICIAL TRANSLATION]

Y.V. VINSKYI – Yulia Volodymyrivna, I would like to ask to let me to provide a brief information under the *Miscellaneous* section for making decision on the situation of Ukrzaliznytsya reform because it had been discussed in various offices for over a year and we have to take a political decision.

Yu. V. TYMOSHENKO – Any objections? None. Does anybody have any comments to the Agenda?

O.Yu. KUCHERENKO – Thank you. I would like to ask you, dear Yulia Volodymyrivna, to include one deputy's job displacement in the regulation draft under Personnel section. This issue had been agreed upon.

Yu. V. TYMOSHENKO – Any objection? No? Thank you.

Yu. O. PAVLENKO – Yulia Volodymyrivna, one more request, if I may. Please include order for the Ministry of Finance and the ministries to draw up the financing procedures and submit them for the consideration of the Cabinet of Ministers.

Yu. V. TYMOSHENKO – I think that we have to approve all the financing procedures that were in place last year and re-approve them. Therefore, I would like to ask to prepare protocol order for the coming Wednesday and all the remaining procedures to be submitted and approved on Wednesday. Please.

V.M. PINZENYK – Dear Yulia Volodymyrivna, dear colleagues. First of all, last week we approved 44 procedures on which we did not have any comments. Yulia Volodymyrivna, for the remaining procedures the names of the programs had been changed, as well as budget items and amounts. Therefore it will be impossible to have it approved automatically, if it were possible we would have submitted all those procedures for approval.

Secondly, Yulia Volodymyrivna, the Ministry of Finance does not set a term for the payment of salaries. This is within the competence of each budget recipient. And the fact that we have financing issues is well known to everybody and it impacted every budget recipient.

Yu. V. TYMOSHENKO – I would like to have a meeting on postponing salary payment terms to be convened literally tomorrow. SFIU has to be sent to the Treasury to investigate if there was indeed no money for paying salaries on time. I think that these are actions against the Government. And in my opinion if the salary payment is postponed even for three days, it will not bring money to the budget, it just brings confusion and provides the opportunity to destabilize the current situation in the country at the time when we need to be calm, when we need to be able to work in a regular manner.

Besides, I am very sorry that today there is no control carried out via the Treasury in the regions of Ukraine as far as the payments to the employees of the state-funded entities are concerned. The salaries are budgeted in full. And the fact that the salary payments are not done I consider to be a drawback in the activities of the Ministry of Finance and the Treasury. According to the current polls, 46% of the state-financed entities were not paid on time last year, at the end of the previous year. The same mess is happening this year, too.

Therefore I would like to request for us to hear specifically this issue next Wednesday. Where are the delays, what kind of delays, why there are any delays? Everything must go according to the standard procedure – on time, salaries must be paid on time. We do not have any reasons for delays. Apart from specially planned work against the Government, aimed at further defamation of the Government. Please.

V.M.PINZENYK – Yulia Volodymyrivna, the Treasury is just paying the invoices.

Yu. V. TYMOSHENKO – Money expenditures have to be controlled. The invoices are paid, the Treasury has all the possibilities and has to monitor whether the salaries had been paid to the state-financed entities' employees or not. And I request to place responsibility for this on the Ministry of finance by protocol order.

V.M. PINZENYK – Yulia Volodymyrivna, the job of the Treasury is to pay the invoice submitted by the budget recipient.

Yu. V. TYMOSHENKO – Looks like you do not pay all the invoices. I think that all the ministers present here know well that you can bring in an invoice and get paid nothing. Or you can get money - for example, to place a deposit from a state mortgage establishment with Nadra Bank with zero interest and it had been okayed. Every kopeck received from the Treasury today is going via the Treasury and the Ministry of Finance. And you do not have to tell us here that we have an automatic procedure. You can ask the ministers present here if they can bring an invoice in automatically and receive any payment? Do not tell us stories!

V.M.PINZENYK – Yulia Volodymyrivna, there is budget and there are allocations. We cannot go outside the limits of the budget revenue. Social payments had been allocated immediately on the first day of the month.

Yu. V. TYMOSHENKO – I request for the special investigation of SFIU into timely payments of salaries and cash cover of all the things related to the social payments. As well as the protocol order obliging the Ministry of Finance to monitor salary payments to the employees of the state-funded entities all over the country, to ensure top-priority of these payments and bare responsibility if the salaries to the employees of the state-funded entities are delayed even for one day.

V.M. PINZENYK – Should I proceed as per Agenda?

Yu. V. TYMOSHENKO – Yes, according to the Agenda.

V.M.PINZENYK – Yulia Volodymyrivna, this is not within the Ministry of Finance scope of authority. We cannot make payments for the local budget.

Yu. V. TYMOSHENKO – No. You will monitor and ensure, and it will be paid by…

V.M.PINZENYK – I understand. But, dear colleagues, I am breaking no news saying that we do not have revenues.

Yu. V. TYMOSHENKO – Nothing of the kind. There are revenues that are used for paying salaries. And I want SFIU to prepare a statement for next Wednesday whether there was money available to pay salaries or not, or was it done on purpose.

V.M.PINZENYK – Regarding the Agenda.

Yu. V. TYMOSHENKO – That's the point.

Voice from the auditorium

Yu. V. TYMOSHENKO – Absolutely right. This is why it has to be checked. Please.

V.M.PINZENYK – Regarding the Agenda.

T.V.KORNYAKOVA – Dear Yulia Volodymyrivna, with your permission I would like to inform you that specialized groups were established within the Prosecutor's Office bodies and just in December we initiated 60 criminal cases regarding illegal salary payment delay, 200 warrants were issued, also by me personally.

I addressed the ministers and I really just want to receive a notice. I have a major request to make – at 12 AM on Monday at the level of the Prosecutor's Office we will convene all the deputies – just to discuss this issue. And if the Ministers or their deputies are be so kind to come forward with some specific suggestions and listen to what we are going to discuss, we would be very grateful for that. Thank you.

Yu. V. TYMOSHENKO – I do ask you to attend. But now the destruction of the State starts with the fictitious delays and fictitious cuts of the salary payments. This is just for you to know what will be now the major system of the struggle against the country and the Government.

Please, as per the Agenda.

V.M. PINZENYK – item 2.2 was excluded from consideration at the last session. This is a draft of the decree initiated by the Tax Administration regarding termination of the alcohol tracking. It was you who excluded it. We did not initiate it, therefore…

Voice from the auditorium

V.M.PINZENYK – and regarding the 19th, there was an instruction from the Prime-Minister regarding… in Ukravtodor portfolio we suggested an additional item. It was an instruction. Unfortunately, the Ministries did not come put forward their suggestions regarding payment for the placement of specialized outdoor advertizing structures in the easement areas. Unfortunately, there are no suggestions coming from the Ministries. The Ministry of Finance is submitting the draft, stipulating for the payment at the auction.

Yu. V. TYMOSHENKO – if Ukravtodor did not initial that draft and the Ministry of Transport did not see it, we cannot include it.

Please.

B.M.DANILISHYN – I got a question for Yuri Fedorovych. Tell us, please if draft of the resolution On Approval of the List of the Subjects of the State Price Regulation was put through the State Committee?

Yu.F. MELNYK - It was approved without remarks by the Ministry of Finance, Ministry of Economics, Ministry of Justice and was submitted to the Cabinet of Ministers.

Yu. V. TYMOSHENKO – Are there any addenda to the Agenda? None. Votes for this Agenda? Please. Votes against? Abstained? The decision is taken.

O.V. TURCHINOV – On the procedure. I think that we have listened attentively to the information supplied by the Prime-Minister and had a possibility to obtain this information from the open sources. I suggest us to approve on record the results achieved during the negotiations in the gas segment in the Russian Federation or National JSC Naftogaz with Gazprom. I suggest we vote and approve these results.

Yu. V. TYMOSHENKO – Any questions regarding the system of supplying Ukraine with the natural gas? Any questions on nuances? I am prepared to answer all the questions. Do you have questions for me to clarify any details?

I.V.VASYUNYK – I do not have any questions. I think that if there is a need to discuss in detail, then we have to discuss details; can we see the signed documents and then talk to the point? Otherwise what is the subject?

O.V.TURCHINOV – Approval.

I.V.VASYUNYK – What do we approve?

Yu. V. TYMOSHENKO – Results of the negotiations process. All the available documents are the formulas available in Europe and they are absolutely identical for all the countries, there are no issues and problems with their meaning and structure.

I.V.VASYUNYK – The signed contracts are not available for the Government?

Yu. V. TYMOSHENKO – Absolutely available. I think that in the part that is necessary for the Government, absolutely everything will be distributed to the Government.

I.V.VASYUNYK – Then it can be put for the approval.

Yu. V. TYMOSHENKO – Well, Ivan Vasyliovych. Your suggestion is known.

I would like to put motion of Olexander Valentynovych to vote. For the approval of the results achieved by the Government in the negotiations process and agreements concluded? Please vote. Please, count. 14. Against the approval? 1. Abstained? 8 abstained. The decision had been taken.

I ask to provide information. Don't disclose the information on the votes; it is just important that the Government has taken such a decision. Let the press-service prepare a press release and bring it to me to read.